TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1912~~ 1913

No. ~~850~~ 882.

GRAND TRUNK RAILWAY COMPANY OF CANADA AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY, APPELLANTS,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON, AND FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED NOVEMBER 29, 1912.

(23,428)

(23,428)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 853.

GRAND TRUNK RAILWAY COMPANY OF CANADA AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY, APPELLANTS,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON, AND FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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BILL OF COMPLAINT OF GRAND TRUNK RAILWAY COMPANY AS AMENDED.

(Filed July 12th, 1912.)

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Grand Trunk Railway Company of Canada, a corporation,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn.

To the Judge of the District Court of the United States for the Eastern District of Michigan:

Humbly complaining, your orator, Grand Trunk Railway Company of Canada, shows unto your Honor that it is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, and that it is a corporate resident and citizen of said Dominion of Canada, and brings this its bill of complaint against the Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, all of which defendants are citizens and residents of the State of Michigan, and thereupon orator avers:

I.

That the citizenship and residence of orator and the citizenship and residence of defendants are diverse and of different states, as above set forth. The Michigan Railroad Commission (hereinafter for brevity called the "Commission") is a body composed of three commissioners appointed by the Governor and confirmed by the Senate of the State of Michigan, under the laws of said state, known collectively as "Michigan Railroad Commission," with power to sue and be sued in such

name, all under the laws of said state, having its office at Lansing in the Eastern District of Michigan. Cassius L. Glasgow resides in Nashville, Barry County, in the Western District of Michigan; Lawton T. Hemans resides in Mason, Ingham County, in the Eastern District of Michigan; George W. Dickinson resides in Pontiac, Oakland County, in the Eastern District of Michigan; and Franz C. Kuhn resides in Mt. Clemens, Macomb County, in the Eastern District of Michigan. The amount involved in this controversy exceeds three thousand dollars ($3,000) exclusive of interest and costs.

II.

The defendants, Cassius L. Glasgow, Lawton T. Hemans and George W. Dickinson, are and have been since the 12th day of September, 1911, the members of and constitute, and have constituted since said date, said Michigan Railroad Commission, duly appointed by the Governor of the State of Michigan, and confirmed by the Senate of such state, and duly qualified, all under and by virtue of an act of the Legislature of such state, duly passed and approved June 2, 1909, and in force on the first day of September, 1909, and thence hitherto, entitled: "An Act to define and regulate common carriers and the receiving, transportation and delivery of persons and property, to prevent the imposition of unreasonable rates, to prevent unjust discrimination, insure adequate service, create the Michigan Railroad Commission, define the powers and duties thereof, and to prescribe penalties for violations hereof." Defendant, Franz C. Kuhn, is Attorney General of the State of Michigan, duly elected, qualified and acting as such under the statutes of said state, and empowered, authorized and required under said Act of June 2, 1909, hereinabove more fully described, to institute and prosecute all necessary actions or proceedings for the enforcement of said act, and of all other laws of the State of Michigan, relating to common carriers, and for punishment of all violations thereof, and to act as counsel in any proceeding, investigation, hearing or trial prosecuted or defended by said Commission.

III.

Orator is a railroad corporation and a common carrier of goods and passengers engaged in both state and interstate commerce, it owns, leases, maintains and operates lines of railroad in the State of Michigan and the Dominion of Canada; its main

lines extend from the City of Portland, in the State of Maine, northwesterly to Richmond, in the Province of Quebec, and also from the City of Point Levi in said Province, in the Dominion of Canada, in a general southwesterly direction to the Cities of Port Huron and Detroit, in said State of Michigan. Orator also possesses and uses in connection with its main track and main line, at different points, switch yards, side tracks and team tracks, which are for the exclusive use of orator for the accommodation of its business, and for the accommodation of its own customers and shippers. Orator also uses, owns and possesses switch yards, side tracks and team tracks within the corporate limits of the City of Detroit, in the State of Michigan, in the district known as Switching District of the City of Detroit, which said switch yards, side tracks and team tracks are used in conjunction and connection with its main line or lines, and the tracks thereof, and are for the exclusive use of orator in the conduct of its business; said team tracks are facilities connected with the main track or line of orator for use in the transportation and interchange of business carried over its main line for its own shippers and customers. A large part of the business of orator is interstate commerce; said interstate commerce is carried on not only between the State of Michigan and various portions of the Dominion of Canada, but also by means of other railroad lines connecting with orator, a large part of such business is carried on between a large number of other states of the United States and the State of Michigan, and between said states and the Dominion of Canada.

IV.

The Grand Trunk Western Railway Company (hereinafter for brevity called the "Western Company") is a corporation organized and existing under and by virtue of the laws of the States of Michigan and Indiana. Its main line or lines run from the City of Port Huron, in the State of Michigan, to the City of Chicago, in the State of Illinois, in a general southwesterly direction, through the States of Michigan, Indiana and Illinois. None of the lines or tracks of said Western Company run to, through or into the City of Detroit, in the State of Michigan, nor to or through any point nearer said City of Detroit than a distance of sixty miles. A large part of the traffic of said Western Company is interstate commerce, carried between said several states and other states in the United States, and between said states and the Dominion of

Canada by the said Western Company as either initial, intermediate or ultimate carrier. The Western Company connects with the lines of orator at Tappan in the State of Michigan, and with the Detroit, Grand Haven & Milwaukee Railway Company at the City of Durand in said state. A large number of shipments of traffic both interstate and intrastate is made over the lines of the Western Company from various points on its line to the City of Detroit over the lines of said Detroit, Grand Haven & Milwaukee Railway Company and the lines of orator. Said Western Company has no terminals in or near the City of Detroit, and its customary and most convenient way of sending traffic to said City of Detroit is by delivering the same to said two connecting carriers at the points above mentioned, for delivery by said carriers to the City of Detroit.

V.

The Detroit & Toledo Shore Line (hereinafter for brevity called the "Shore Line") is a railroad corporation organized and existing under and by virtue of the laws of the States of Michigan and Ohio, and is a common carrier of goods and passengers, engaged in state and interstate commerce, owning, operating and maintaining lines of railway in the States of Michigan and Ohio; the main line of such Shore Line extends from the City of Toledo, in the State of Ohio, to the City of Detroit, in the State of Michigan, in a general northerly direction through the States of Ohio and Michigan. Said Shore Line has no terminals and no terminal facilities of any kind in the City of Detroit, but uses for the purposes of its traffic the terminal facilities of your orator under a certain agreement dated the 30th day of June, 1911, entered into by and between orator and said Shore Line, a copy of which agreement is attached to this bill, marked Exhibit "A" and made a part hereof, with the same force and effect as if herein inserted.

VI.

The freight terminal facilities of orator in the City of Detroit are well and judiciously located, were built in obedience to public necessity and are properly equipped and constructed, having reference to the busines of the country, and that reasonably to be expected, and are well and economically operated; its freight terminal facilities in that city represent an actual and fair value of more than one million dollars, and could not, as orator is advised and believes, be replaced for that sum; the

team tracks of your orator within the City of Detroit represent an actual and fair value of many thousands of dollars, and could not, as your orator is advised and believes, be reproduced for ten times the amount originally invested. The cost of acquiring the ground and providing the team tracks necessary for the accommodation of cars and traffic that would in the ordinary course of business, as developed in the last five years, be delivered to your orator by other lines and by industries along the lines of other roads in the City of Detroit, if your orator is required to allow the use of its team tracks for the purpose of local switching within said city from and to such other roads and industries to and from your orator's team tracks, would not be less than many hundreds of thousands of dollars as your orator is advised and believes.

VII.

Tracks from industries on or near your orator's lines to a connection with said lines within the corporate limits of the City of Detroit, called industrial sidings or tracks, either were constructed and built by said industries or were constructed and built by your orator and the expense thereof billed to said industries, and repaid by them to orator. The lands on which such industrial tracks are located, or the necessary easements over said lands for the purpose of such tracks, were either acquired and are held and owned by the particular industries accommodated by such tracks, or were acquired and are held by your orator for the purpose of accommodating said tracks, and without expense to your orator, either in acquisition or maintenance of said lands, easements or tracks; and orator is not responsible for cars placed by orator or others on said tracks for the respective industries located on said tracks and is not required to police said tracks in any manner whatever; whereas the team tracks of orator are laid on ground acquired by orator at a great cost, were constructed and are maintained by orator at a great expense and require yearly and every year large outlays of money in policing, guarding and repairing the same.

VIII.

Local tariffs, both state and interstate, covering switching within the corporate limits of the City of Detroit are issued under the name of The Grand Trunk Railway System (lines west of Detroit and St. Clair rivers) hereinafter for brevity

called "Grand Trunk System." Said Grand Trunk System is made up of a number of railroad lines, among which said lines are your orator and the Western Company; said lines are lines either under a common management or with a common interest and are not lines which compete with or run parallel to each other, nor are they lines which in general or to any considerable extent feed or serve the same territories or districts. When a local tariff is issued by and in the name of said Grand Trunk System no further concurrence by any individual lines constituting such system, among them being your orator, is required, but such tariff governs and controls the rates charged and collected by orator for all services named therein.

IX.

The Legislature of the State of Michigan, at its session of the year 1911 passed an act known as Act No. 139 of 1911, amending Act 300 of 1909, a copy of which act duly certified by the Secretary of State of the State of Michigan, is attached to the original bill filed in this cause, marked Exhibit "B," and made a part hereof. Section 7 of said act in sub-sections "a," "c" and "d" provides, among other things, as follows:

"(55) Sec. 7. (a) All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections betwen one another and the establishments of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: Provided, precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent

of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper.

"(57) (c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks; providing such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded; Provided further, if the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised;

"(57a) (d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line, when required so to do; Provided, that when delivery is requested, which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted, or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

Orator avers that said Act No. 139 of 1911 and said Act No. 300 of 1909 enacted by the Legislature of the State of Michigan, as set forth above in this bill, are unconstitutional, null and void as to orator, and the property of orator, in so far as they require of orator or the property of orator, or allow or authorize the Commission to require of orator or its property the following services, operations, functions or uses, or any of them, viz.: That orator shall receive cars from another carrier at a junction point or physical connection with such carrier within the corporate or switching limits of the City of Detroit for transportation to orator's team tracks, or that orator shall be required to allow the use of its team tracks for cars to be hauled from said team tracks to a junction point or physical connection with another carrier, within such limits, or that orator shall be required to haul such cars in either of the above named movements; that orator shall be required to allow the use of orator's hold tracks for any of the services above named; that orator shall be required to allow the use of any other of its terminal facilities for any of said services; that orator shall be required to allow the use of its team tracks, hold tracks or other terminal facilities to any other carrier; that orator shall be required to deliver its cars to any other carrier at a junction point or physical connection with such carrier, within the corporate or swtiching limits of the City of Detroit for delivery to any other point within said limits, or to receive from such carrier at such junction point cars to be delivered to any other point of destination within said limits; that orator shall be required to allow the use of its team or hold tracks to any industry on its own lines within said limits or on the line of any other carrier within such limits, that orator shall be required to allow the use of its team tracks in any movements between said team or hold tracks, and any other team or hold tracks, either belonging to it or to any carrier within said limits; that orator shall be required to undertake, perform or take part in the business of intra-city switching or in any transportation movement from any point within the corporate or switching limits of the City of Detroit, to any other point within said limits, or to allow the use of its terminal facilities, team tracks or hold tracks within said limits for any such purpose; that orator shall be required to either receive cars from other carriers or to deliver cars to other carriers at junction points or physical connections within said limits, or receive cars from or deliver cars to industries located within said limits, where the beginning and conclusion of the movements engaged in by orator are both within

said limits. So far as said acts or any other acts of the State of Michigan require any of the above named services or operations, or require the use of orator's property for any such purposes, said acts are unconstitutional, null and void, and constitute the taking of the property of orator without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

X.

On or about the 29th day of July, A. D. 1912, said Grand Trunk System issued and published a certain tariff, a copy of which is filed with the original bill filed in this cause marked Exhibit "C" and is hereby referred to with the same force and effect as if herein inserted; said tariff is entitled "M. R. C. No. 236, I. C. C. No. A-1428, issued July 29, 1911, and effective September 1, 1911" (hereinafter for brevity referred to as "M. R. C. No. 236"); said tariff was duly filed with the Michigan Railroad Commission and the Interstate Commerce Commission, as required by law; said tariff among other things sets forth the rates for switching services within the corporate limits of the City of Detroit, and as to team track service provided as follows:

"In case team track deliveries are required for the unloading of shipments received from other carriers, or when such team tracks are used for the loading of shipments for delivery to other carriers, three dollars per car in excess of the charge made for switching to or from industrial sidings will be assessed."

That said tariff also provided a charge for switching to and from industrial sidings of five dollars ($5), and a charge for team track delivery from junction points within the switching limits of the District of Detroit of eight dollars ($8).

Orator further shows that all of said charges were fair, just and reasonable, and that the difference between said charges was not unduly or unjustly discriminatory, or in violation of the Interstate Commerce Act, or any act amendatory thereof, or supplemental thereto, etc., nor of any acts in the State of Michigan, then or now in force, and then or now constitutional, valid and binding upon your orator.

XI.

On or about the 12th day of September, 1911, one John S. Haggerty filed his complaint against the Western Company impleaded as the Grand Trunk Railway Company, and known as D. 461 on the docket of the Commission, alleging

among other things that the rates for switching service published in said tariff more fully set out in Paragraph X of this bill, were unreasonable and also that said rates resulted in discrimination against the user of the team tracks of the defendant to the extent of three dollars per car. An answer denying said averments was filed by the Western Company, in the name under which it was impleaded, and hearing had on said complaint and answer before the Commission. No competent evidence showing, or tending to show, any such rates to be unreasonable, and no evidence showing, or tending to show, any of such rates to be unjustly or unduly discriminatory was introduced or offered on the part of any party to such proceeding before said Commission, but said Commission, pretending to have jurisdiction over the subject matter and parties defendant named in said complaint, did on the 6th day of February, A. D. 1912, issue a certain order, a copy of which order is attached to this bill, marked Exhibit "D" and made a part hereof, with the same force and effect as if herein inserted, ordering said Western Company on or before thirty days from said 6th day of February, A. D. 1912, to file and make effective a tariff removing said alleged discrimination, namely, the alleged discrimination between the charges for industrial switching and for switching between junction points and the team tracks of your orator, and further ordering said Western Company by such tariff to "publish and make effective like charges for the movement of a carload shipment received from an industry in the City of Detroit, upon said Grand Trunk Western Railway, consigned for delivery upon a team track or other siding of said road, within the same city, and for a like shipment received by said Grand Trunk Western Railway Company from a connecting carrier at a junction point within the corporate limits of the City of Detroit, consigned to team track or other siding upon said road, within the same city."

XII.

Said Michigan Commission had no jurisdiction nor authority to enter or make such order against said Western Company for the following, among other, reasons: Said Western Company had no rails within or nearer to the City of Detroit than a distance of sixty miles, and neither owned, leased nor operated any lines running to or into the said City of Detroit and had no terminal facilities, team tracks or industrial sidings within said City of Detroit, and had no power to publish or make effective such tariff as was enjoined

upon it by said Commission; that such an order, even if lawful and valid, could be effective only against carriers having rails leading to or into the City of Detroit, and terminal facilities and team tracks therein, and that failure to join such carriers having such entrance into the City of Detroit and freight terminals, team tracks or industrial sidings therein was alone and of itself sufficient to make any such order utterly null void and of no effect; that orator was never made a party to the complaint or to the proceedings before said Commission known as John S. Haggerty vs. Grand Trunk Railway Company et al., D. 461, in which said order was entered, and said order was not and could not have been directed against orator; that while orator was not a party to said proceeding, nevertheless such order affected the property and income of orator, in that the tracks over which the rates named in said tariff so complained of in said proceeding, and so set out in said order, applied, were in large part the property of your orator, and not of said Western Company, and that orator received for the use of its said tracks for such switching service the rates so complained of in said proceeding and forbidden by said order, of which orator could not be deprived without a hearing; that said Commission had no power to regulate the use of orator's team tracks in any movement of any shipment from any industry within the corporate or switching limits of the City of Detroit over orator's tracks, or over the tracks of any other carriers, consigned for delivery upon a team track or other siding of orator within the same city, nor any power over the movement of a shipment received by orator from a connecting carrier at a junction point within the corporate or switching limits of the City of Detroit, consigned to a team track or other siding of orator within the same city, nor over the rates charged by orator for any such service, nor over any of the services or rates charged therefor more fully set out in paragraph IX of this bill as amended; that the use of orator's team tracks for the purposes above set forth results in such congestion of said tracks and of orator's other terminal facilities as to constantly impede the movement of interstate and intrastate commerce over orator's tracks, for the purpose of which movements orator and the lessors of orator in this state were incorporated; that orator and orator's lessors were not incorporated for the purpose of local or intra-city switching or drayage business; that any and all acts passed or attempted to be passed by the State of Michigan compelling orator or purporting to compel orator to open its team tracks to other carriers, or to haul

the cars of other carriers, or to deliver cars to other carriers, for the purpose of local switching within the corporate limit of said city, or to perform any of the services named in said order, are unconstitutional, void and of no effect, and that to so use or force orator to use the property of orator constitutes the taking of property without due process of law and in contravention of the Fourteenth Amendment to the Constitution of the United States.

XIII.

Thereafter the Grand Trunk System published its new tariff entitled: "Supplement No. 4 to M. R. C. No. 236, Supplement No. 4 to I. C. C. No. A-1428, issued March 5, 1912, effective intrastate March 16, 1912, and interstate April 8, 1912 (except as noted in individual items)," (hereinafter for brevity referred to as "Supplement No. 4 to M. R. C. No. 236"), a copy of which tariff is attached to the original bill, marked Exhibit "E" and is hereby referred to. This tariff names a rate of five dollars ($5) between industrial tracks, five dollars ($5) between junction points with connecting carriers, within the limits of the switching district of Detroit, and industrial tracks within said limits; eight dollars ($8) between industrial tracks and team tracks located on the lines of your orator within said limits; eight dollars ($8) between junction points of your orator with other railroad companies within said limits and team tracks within said limits; and eight dollars ($8) between team tracks on your orator's lines; said tariff was duly filed with the Michigan Railroad Commission and the Interstate Commerce Commission, as required by law.

Orator further shows that said tariff was not issued under, by virtue of or in accordance with said void and invalid order of said Commission of the 6th day of February, 1912, aforesaid, which said order was not either binding or effective upon orator, and could not be enforced against orator, and could not affect any other lines making up the Grand Trunk Railway System above named for the reasons, among others, given in paragraph XII of this bill, supra; but said Supplement No. 4 above described was issued by said Grand Trunk System in order that orator and other lines composing said system might be enabled to obtain a just and fair remuneration for the use of their said team tracks, and at the same time prevent further attack from discontented shippers or those who pretend to be shippers, on the

ground of said alleged discrimination, between team tracks and industrial sidings.

XIV.

On the 14th day of March, A. D. 1912, said John S. Haggerty filed a supplemental petition with said Commission complaining of said new tariff and alleging that the rates set forth in said new tariff, known as Supplement No. 4 to M. R. C. No. 236, are unreasonable and exorbitant and if put in effect would mean a great hardship to said Haggerty. Thereupon and by its order, dated March 15, A. D. 1912, a copy of which is attached to this bill and marked Exhibit "F," with the same force and effect as if herein inserted, said Commission, pretending to have jurisdiction over said Western Company in this matter, and over the use of the team tracks of orator and over the subject matter of intra-city switching, attempted to suspend the operation of said tariff to and until the 29th day of April, A. D. 1912, in order, according to the terms of said order, that said Commission might "have an opportunity to investigate the reasonableness of such proposed rate and the matter set forth in said complaint"; and orator avers that said Commission is utterly without authority of law to regulate or make any order in reference to said rates of orator complained of in said supplemental petition, or the services for which said rates were charged, or any rates named in said Supplement No. 4 to M. R. C. No. 236, or any services set forth therein, for the reasons more fully set forth in paragraphs IX and XII of this bill; that any law or laws passed or purporting to have been passed by the Legislature of the State of Michigan authorizing or purporting to authorize said Commission to exercise any such alleged authority or jurisdiction, are null, void and of no effect and in contravention of the Constitution of the United States and the Fourteenth Amendment thereto.

XV.

Thereafter and on, to-wit, the 26th day of March, A. D. 1912, the Grand Trunk System issued its tariff dated the 26th day of March, A. D. 1912, entitled: "Supplement No. 5 to M. R. C. No. 236," a copy of which is attached to the original bill, marked Exhibit "G," and is hereby referred to, suspending intrastate rates named in the former tariff issued by the Grand Trunk Railway System, entitled: "Supplement No. 4 to M. R. C. No. 236," more fully described in paragraph XIII of this bill. Said suspension tariff was issued

under authority of said last named order of said Commission, and said tariff was duly filed with the Michigan Commission as required by law.

XVI.

On or about March 30, 1912, said Grand Trunk System published its tariff dated March 30, 1912, entitled: "Supplement No. 6 to M. R. C. No. 236, Supplement No. 5 to I. C. C. No. A-1428" (hereinafter for brevity referred to as "Supplement No. 6"), effective as to intrastate traffic April 11, 1912, and as to interstate traffic May 8, 1912, except as noted in individual items therein named, a copy of which is attached to the original bill of complaint marked Exhibit "H," and is hereby referred to; said tariff was duly filed with the Michigan Commission and the Interstate Commerce Commission as required by law. Under the terms of said tariff all rates between industries having private sidings on the Grand Trunk Railway System, including the lines of orator, and hold or team tracks on said system, and all rates between hold or team tracks on said system, and other hold or team tracks on said system, including the lines of your orator at Milwaukee Junction or West Detroit, Michigan (said points being within the corporate limits of the City of Detroit and within the Detroit switching limits heretofore mentioned), and all rates between junction points of all other carriers within said corporate limits of said city (except the Shore Line), and the team tracks of orator, were canceled and said team tracks withdrawn from all intra-city, intrastate and interstate switching movements, with the exception just noted. A rate of eight dollars ($8) on carload tarffic switched between the following points, "connection with D. & T. S. L. R. R. (the Shore Line) at West Detroit, Michigan," and "hold or team tracks on the G. T. Railway System (Grand Trunk System) within the boundaries of the switching district of Detroit, Mich.," was provided where such traffic originated at or was destined to points beyond the boundaries of the switching district of said City of Detroit, upon which the Shore Line receives a revenue or road haul to or from West Detroit, Michigan.

Orator further shows that the team tracks of orator are its private property; that orator is not required to allow the use of its team tracks to other carriers, or to haul cars from or to junction points with other carriers within the switching or corporate limits of the City of Detroit to or from the team tracks of orator within said limits, or to allow the use of its team tracks in switching movements beginning and

ending within the switching or corporate limits of said city, or for any of the purposes, movements or operations more fully set out in paragraph IX of this bill as being contrary to the constitutional rights of orator, but that it has the right to use such team tracks for the purposes of its own traffic, cars and shippers.

Orator shows that the said exception is not an unjust discrimination in favor of or against any carrier or shipper, but that orator has a right to allow the use of its team tracks to other carriers under such conditions and upon such terms as it may see fit.

Orator further shows that as above set forth said Shore Line has no terminal facilities within the corporate limits of the City of Detroit, and that orator has the right to allow the use of its terminal facilities to said Shore Line upon such terms and conditions and for such remuneration as to it may seem just and reasonable; that said allowance of team tracks of orator to said Shore Line is required by the contract between orator and Shore Line marked "Exhibit A," attached to the original bill herein filed.

XVII.

Said Michigan Commission did, on the afternoon of the 10th day of April, A. D. 1912, suspend said last named tariff, entitled: "Supplement No. 6 to M. R. C. No. 230," and threatens and gives out, and has threatened and given out that it will require orator to allow the use of its team tracks to industries on its own lines within the switching or corporate limits of the City of Detroit, and to other railroads connecting with orator at junction points within said switching or corporate limits of said City of Detroit, and to industries on the lines of said other railroad companies at rates and on conditions to be fixed and named by said Michigan Commission, and on rates and conditions similar to or equal to the rates at which orator performs other switching services.

XVIII.

Orator further shows that said Michigan Commission gives out and threatens that it will make orator a party to said proceedings brought by said John S. Haggerty, and to said order entered therein, and to all proceedings under said suspension of said last named tariff, and that it will require orator to continue such local switching business and will further re-

quire orator to allow the use of its terminals to, or to receive from, transfer for, or deliver cars to other carriers at junction points with such other carriers in local movements within said city, to or from orator's hold or team tracks within said city, or to allow the use of its team tracks or other terminals to industries within said limits.

XIX.

Orator further avers that said order of said Commission in so attempting to regulate the use of orator's terminals, and to require orator to give the use of said terminals to other railroads engaged in like business, and suspending the tariff whereby orator attempts to withdraw said terminals from the use of other carriers as above set forth, and from the use of industries along orator's lines, and along the lines of such other carriers, and requiring orator to do a local switching business between points wholly within the corporate limits of the City of Detroit, is null, void and of no effect; said Michigan Commission has no authority or jurisdiction to regulate, manage, supervise or control the team tracks or hold tracks of orator, or to require your orator to do a local switching business within the corporate or switching limits of Detroit, or to require orator to either yield its terminal facilities, or any of them, to any other carrier, or to haul cars for any such other carrier from or to the junction point of any such carrier within such corporate or switching limits to or from any other point of destination within such limits.

XIX-a.

Said Act of the Legislature of the State of Michigan of June 2nd, 1909, being Act No. 300 of 1909, together with the amendments thereto and said respective orders, and each of them, are, in the penalties prescribed for their violation, so drastic that no owner or operator of railway property can invoke the jurisdiction of any court to test the validity thereof, except at the risk of imprisonment in jails in the various counties through which the road of your orator runs, and for that reason said Act, together with all amendments thereto, including Act 139 of the Laws of 1911 of said Legislature and said respective orders, and each of them, deny to your orator equal protection of the laws, and deprive it of its property without due process of law, and are, and each of them is, for that reason unconstitutional and void.

XX.

Orator further shows that not only is it the owner, holder or lessee of many of the tracks covered by said unlawful orders against said Western Company, more fully set out above, but that it receives all the switching rates named in any and all of said tariffs for the switching services covered by said various orders of said Commission above named, performed over or by means of said tracks so owned, held or leased by it as aforesaid; that to require orator to allow the use of its terminal facilites against the will of your orator and on any conditions other than those demanded by orator, or to require orator to continue to allow the use of its hold or team tracks to industries on its line within the corporate or switching limits of the City of Detroit, for local switching business within such limits or to other carriers, or to require orator to receive, handle or deliver cars within said limits for such other carriers, or to receive such cars and deliver the same to its hold or team tracks, constitutes the taking of orator's property, without just compensation and without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

XXI.

Every freight shipment and every demand upon orator requiring orator to accept cars from or deliver cars to another carrier at a junction point within the corporate or switching limits of said City of Detroit, for a switching service between said junction point and the team tracks of your orator, and every demand for the use of the team tracks of orator for the beginning or conclusion of a switching movement wholly within the corporate limits of said City of Detroit, and every demand for the use of orator's team tracks for a switching movement to or from an industry on orator's lines between such industry and the team tracks of your orator, and every demand for the use of orator's team tracks for a switching movement to or from an industry on the lines of another carrier, and the team tracks of your orator, and every demand for any of the various services named in Paragraph IX of this bill, may, under said order suspending orator's tariff, known as Supplement No. 6 to M. R. C. No. 236, more fully above described, result in an action against orator or in a criminal proceeding against its officers, agents, directors or employes

and will result in an endless number of actions at law and criminal proceedings.

If orator, its officers, directors, agents and employes shall refuse obedience to said order of said Commission suspending orator's tariff above described, said Commission and said Franz C. Kuhn, as Attorney General of the State of Michigan, on behalf of said Commission, will, as your orator is advised and believes, institute proceedings under and in accordance with the provisions of the statutes of the State of Michigan, at law or otherwise, against orator, its officers, directors, agents or employes, to enforce the said order of suspension, and all other orders above set forth in this bill, and threatens to and will take proceedings against orator, its officers, directors and employes to the same end and for the same purpose.

If orator, its officers, directors, agents and employes shall fail or refuse to put in effect tariffs fixing the right to the use of orator's team tracks on the same terms and conditions, and for the same rates as orator provides for switching between industries, and if orator fails to publish and issue, or to concur in the publication and issue of the tariffs required by the order of the Commission of February 6th, A. D. 1912, above set forth, or if orator refuses to allow the use of its team tracks on the terms and conditions, and for the rates prescribed, or to be prescribed by said Commission, or refuses to suspend its tariff, known as Supplement No. 6 to M. R. C. No. 236, above described, or if orator refuses to engage in switching between points within the corporate limits of the City of Detroit, or to allow the use of its team tracks for such switching movement, or to allow the use of its team tracks to other carriers, or to industries on orator's lines, or on the lines of other carriers, all within such corporate or switching limits of the City of Detroit, said defendant, Franz C. Kuhn, will, as your orator is advised and believes, institute proceedings at law or otherwise under the statutes of the State of Michigan for the purpose of enforcing said statutes, and said orders of the Commission, and each one thereof, and the penalties and provisions thereof.

In consideration whereof, and for as much as your orator is remediless in the premises by the strict rules of the common law, and can only have relief in the premises where matters of this kind are properly cognizable and relievable, your orator prays that said acts of the Legislature of the State of Michigan, and each of them, and said orders of said Commission, and each of them, be declared as to orator, its officers,

directors, employes and agents to be in violation of the Constitution of the United States and null, void and of no effect in so far as they require orator to receive cars from another carrier at a junction point or physical connection with such carrier within the corporate or switching limits of the City of Detroit for transportation to orator's team tracks, or to allow the use of its team tracks for cars to be hauled from said team tracks to a junction point or physical connection with another carrier, within such limits, or to haul such cars in either of the above named movements; or to allow the use of orator's hold tracks for any of the services above named; or to allow the use of any other of its terminal facilities for any of said services; or to allow the use of its team tracks, hold tracks or other terminal facilities to any other carrier; or to deliver its cars to any other carrier at a junction point or physical connection with such carrier, within the corporate or switching limits of the City of Detroit, for delivery to any other point within said limits, or to receive from such carrier at such junction point cars to be delivered to any other point of destination within said limits; or to allow the use of its team or hold tracks to any industry on its own lines within said limits or on the line of any other carrier within such limits; or to allow the use of its team tracks in any movements between said team or hold tracks, and any other team or hold tracks, either belonging to it or to any carrier within said limits; or to undertake, perform or take part in the business of intra-city switching or in any transportation movement from any point within the corporate or switching limits of the City of Detroit, to any other point within said limts, or to allow the use of ts terminal facilities, team tracks or hold tracks within said limits for any such purpose; or to receive cars from other carriers or to deliver cars to other carriers at junction points or physical connections within said limits, or receive cars from or deliver cars to industries located within said limits, where the beginning and conclusion of the movement engaged in by orator are both within said limits, and that Michigan Railroad Commission, and said Cassius L. Glasgow, Lawton T. Hemans, and George W. Dickinson as Commissioners of said Michigan Railroad Commission, be temporarily and permanently restrained and enjoined from continuing to suspend the said tariff, entitled: "Supplement No. 6 to M. R. C. No. 236, Supplement No. 5 to I. C. C. No. A-1428," issued by said Grand Trunk Railway System (lines west of Detroit and St. Clair Rivers), and that said Michigan Railroad Commission and said Cassius L. Glasgow, Lawton T. Hemans and

George W. Dickinson, as Commissioners thereof, and that Franz C. Kuhn, as Attorney General of the State of Michigan, be temporarily and permanently restrained and enjoined from enforcing and attempting to enforce, said orders of said Michigan Railroad Commission, of February 6th, A. D. 1912, and April 10th, A. D. 1912, and from taking any action, step or proceeding against orator, or any of its officers, agents, directors or employes to enforce any penalties or remedies for the violation of said orders by orator, or either of them.

That said Franz C. Kuhn, as such Attorney General, and his agents and attorneys, be temporarily and permanently enjoined and restrained from taking any action, step or proceeding against orator, its officers, directors, agents and employes, to enforce the penalties and remedies specified in said Act of June 2, 1909, or in any act amendatory thereof, or supplemental thereto, or to enforce any other penalties or remedies specified or provided in any statutes or by any other laws of the State of Michigan for failure to obey the orders of the Michigan Railroad Commission and the acts of the State of Michigan hereinabove set out; and that your orator may have such other and further relief as may be just and equitable.

And may it please your Honors to grant unto your orator a writ of subpoena of the United States of America, issuing out of and under the seal of this Honorable court, directed to the said Michigan Railroad Commission, and said Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, commanding them, and each of them, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable court, then and there to answer but not under oath (answer under oath being hereby expressly waived) all and singular the premises, and to stand to and perform and abide by such order, direction and decree, as may be made against them in the premises, and that pending the final hearing of this cause, a temporary restraining order may be issued as above prayed. And your orator will ever pray.

Grand Trunk Railway Company of Canada,
By G. W. Alexander,
Local Treasurer.
Kretzinger & Kretzinger,
L. C. Stanley,
Its Solicitors.

United States of America, Eastern District of Michigan, Southern Division, Wayne County, Michigan, ss.

G. W. Alexander, being first duly sworn, on oath, says that he is Local Treasurer of the Grand Trunk Railway Company of Canada, complainant above named, and duly authorized to make this affidavit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

Geo. W. Alexander.

Subscribed and sworn to before me this 27th day of April, A. D. 1912.

Arthur E. Barley,
Notary Public in and for Wayne County, Michigan.
My commission expires on 17th May, 1915.

APPENDIX.

NOTE.

Exhibit B, being the certified copy of Act 300 of 1909 of the Legislature of the State of Michigan, referred to in Paragraph IX on page 9 of this bill; Exhibit C, being tariff entitled, M. R. C. No. 236, etc.; Exhibit E., being Supplement No. 4 to said tariff; Exhibit G, being Supplement No. 5 to said tariff; and Exhibit H, being Supplement No. 6 to said tariff; all of which exhibits are filed with the original bill in this cause, are too unwieldy to attach to these copies.

EXHIBIT A.

AGREEMENT BETWEEN DETROIT AND TOLEDO SHORE LINE R. R. AND GRAND TRUNK RAILWAY COMPANY OF CANADA.

Memorandum of Agreement Made this thirtieth day of June, 1911, by and between the Grand Trunk Railway Company of Canada, party of the first part, hereinafter referred to as the "Grand Trunk"; and the Detroit and Toledo Shore Line Railroad, party of the second part, hereinafter called the "Shore Line."

Whereas, the parties have agreed upon the terms of interchange and the mutual handling of their business, including the accommodations for said business at Detroit, which agreement they desire to put in writing.

Therefore, this Agreement, Witnesseth, that the parties have agreed and do hereby agree mutually, as follows:

1. The Grand Trunk permits the Shore Line to use all tracks in the yards of the Grand Trunk at West Detroit, so-called, viz:—all Grand Trunk tracks west of Vinewood Avenue, for the purpose of delivering cars to the Grand Trunk, and receiving cars from the Grand Trunk; also for the purpose of interchanging cars with other Railroad Companies at West Detroit, and for loading and unloading cars within these limits.

2. Cars shall be deemed to have been delivered by and to the Grand Trunk, and the Shore Line, respectively, when placed on one of the tracks in that yard, accompanied or preceded by proper data for forwarding, and to insure delivery, and accepted by the car inspector of the receiving road; the receiving road shall be responsible for the cars, contents and per diem, after receipt of the proper data for forwarding, and to insure delivery, and until they have been accepted or rejected by its inspector.

3. The Grand Trunk shall employ and manage the station staff, warehouse staff, and yard staff at said West Detroit, including the yard engines, enginemen, firemen, switchmen and car checkers, and the business of the Shore Line and the Grand Trunk shall be handled at said West Detroit by said employes, and for that purpose the present offices, warehouses and other improvements and facilities shall be used.

4. Said employes when handling Grand Trunk business, or cars, at said West Detroit shall be considered as exclusively Grand Trunk employes, and the Grand Trunk will assume the responsibility for all injury, damage and loss arising from the acts or negligence of said employes, when so acting, and when said employes are handling Shore Line business, or cars, at said West Detroit, they shall be considered as exclusively Shore Line employes and the Shore Line will assume the responsibility for all injury, loss and damage, arising from the acts or negligence of said employes, when so acting, and when said employes are handling cars of both companies in one train, or cut of cars, at said West Detroit, they shall be considered as joint employes and the costs of all injury, damage and loss, to common property or employes, or to third parties, or property of same, arising from the acts or negligence of said employes, when so acting, shall be divided between the two Companies under their wheelage proportion based on the wheelage of that month in which the accident occurs.

5. The Shore Line will pay the Grand Trunk Companies for cars handled by them and for the Shore Line outside of the joint district mentioned in Clause 1 the regular tariff switching charge according to current tariffs, that now in effect being known as G. F. A. No. 1312, issued February 18th, 1908.

6. At any and all times, upon request from the Grand Trunk, the Shore Line will haul cars with their power between West Detroit yard, above mentioned, and either the Milwaukee Junction yard or the new yard on the Port Huron Division in the Township of Hamtramck, if the circumstances make such request necessary or desirable; and with reference to such services it is agreed that they are performed by the Shore Line as a contractor for the Grand Trunk Companies, and therefore if there be in any such haul cars for which the Shore Line under this agreement is to pay the Grand Trunk Company a switching charge that such switching charge shall be paid without abatement from the fact that they are hauled by Shore Line engine.

7. The Grand Trunk has certain warehouse facilities, including offices at the foot of Beaubien Street, and will permit business routed via the Shore Line to and from Detroit City to be handled by its staff and in its said warehouse and offices at that point, similarly with its own business. For the handling of Shore Line freight the Shore Line will pay the Grand Trunk such proportion of the total warehouse expenses

as the Shore Line tonnage shall bear to the total tonnage handled through the warehouse each month.

8. In handling said business at said Beaubien Street freight houses, the parties agree that each will assume any loss and damage to its own freight where the loss or damage arises from the acts or negligence of said staff or the use of said warehouse or appliances connected therewith. On mixed cars of City and through less car lot merchandise the Shore Line accepts responsibility for contents until accepted by the Grand Trunk at Beaubien Street freight houses.

9. Cars containing L. C. L. freight for Detroit City delivery shall be switched from West Detroit to Beaubien Street freight houses or vice versa for $5.00 per car. Cars to be computed on basis of one car for each five tons of City freight.

10. For all defective cars required to be hauled by the Grand Trunk from West Detroit to Milwaukee Junction and return for the Shore Line, on account of repairs to be made, the Shore Line will pay the Grand Trunk at the rate, of $5.00 (five dollars) per car, for such service. For the "per diem" on such cars, the Shore Line shall be solely responsible.

11. The Grand Trunk will, in carrying out the terms of this agreement, give the Shore Line as prompt and efficient service as is given to its own business. The Superintendent of Terminals or other officer in charge of the Grand Trunk Terminals, at any time of congestion, shall treat Shore Line trains or cars on a parity with the trains or cars of the Grand Trunk in the matter of entrance to and use of West Detroit yard; that is to say, the Shore Line will enjoy equal rights and obligations in and to the use of the West Detroit Yards, as the Grand Trunk.

12. The Shore Line will pay to the Grand Trunk each month for the preceding month, for the said service and in maintenance of the said facilities at West Detroit, a sum which shall bear the same ratio to the total expense, of salaries, wages, etc., of the staff at West Detroit,—including fuel, lights, stationery, maintenance of tracks and buildings, etc., —as the number of cars handled for the Shore Line in interchange with the Grand Trunk Company, and all other Companies at West Detroit, bears to the total number of cars handled at West Detroit for that month.

The count of the cars handled at West Detroit is to be made on the following basis:—

Exhibit A.

EXAMPLE—100 cars arriving at West Detroit

		Shore Line In	Shore Line Out	Grand Trunk In	Grand Trunk Out
	From Shore Line for Grand Trunk	44			44
50	For P. M. R. R.	3	3		
	For Industry at West Detroit	3	3		
		50	6		44
	From Grand Trunk for Shore Line		15	15	
25	For P. M. R. R.			5	5
	For Industry at West Detroit			5	5
			15	25	10
	From P. M. R. R. for Shore Line	5	5		
10	For Grand Trunk			5	5
		5	5	5	5

		Shore Line In	Shore Line Out	Grand Trunk In	Grand Trunk Out
	From West Detroit Industry tracks				
15	For Shore Line	7	7		
	For Grand Trunk			8	8
		7	7	8	8

Total arrived—100 Shore Line 95 105
Grand Total in and out—200. 47.50% 52.50%

13. The Shore Line will also pay to the Grand Trunk Company:

(a) Twelve per cent. (12%) of the salary of the Superintendent of Terminals.

(b) Ten per cent. (10%) of the salary of the Detroit Agent, Chief Clerk, Assistant Cashier, Mail Clerk, Telephone Clerk and four messengers.

(c) Twenty per cent. (20%) of the salary of the Detroit Cashier, Collection Clerk, and two Collectors.

(d) Twenty-five per cent. (25%) of the Street Car and Ferry expenses of the employes of the staff of the said Grand Trunk at said Beuabien Street office, while traveling on street car and the Detroit River ferries on business in connection with yard and freight office service.

14. The Shore Line will also pay to the Grand Trunk all the wages of the employes at West Detroit, and Beaubien Street freight houses carried on the Grand Trunk "Pay-Rolls," where employed in the exclusive service of the Shore Line, such exclusive employes to be assigned to the Detroit and Toledo Shore Line work, subject to the approval of the Shore Line Superintendent.

15. The Shore Line will pay to the Grand Trunk Company in monthly cash settlements as follows:

A valuation of the Grand Trunk property tracks and station buildings west of Vinewood Avenue, which is called the West Detroit Yard, has been agreed upon at One Hundred Thousand Dollars ($100,000.00), and it has been agreed that the Shore Line shall have equal one-half use of this property, and shall pay monthly as a rental their wheelage proportion of five per cent. (5%) per annum on the said valuation, wheelage to be computed as per Clause 12.

16. The Shore Line will pay to the Grand Trunk Company, Twenty Dollars ($20.00) per month for the use of warehouse, warehouse tools, and appliances. And One Hundred Dollars ($100.00) per year for office rental and use of furniture in the said Beaubien Street freight house.

17. This agreement to remain in effect until ninety days after either party thereto shall give written notice to the other of its desire to terminate the same.

Executed in duplicate this 30th day of June, 1911, by the parties through their respective duly authorized officials.

Detroit & Toledo Shore Line R. R.
J. P. Main,
Superintendent and Traffic Manager.

Grand Trunk Railway Company of Canada.
E. H. Fitzhugh,
First Vice-President.

Recommended:
W. G. Brownlee,
General Transportation Manager.

EXHIBIT B.

ACT NO. 139 OF THE PUBLIC ACTS OF MICHIGAN, SESSION OF 1911.

Introduced by Mr. Currie.

Bill No. 520 File No. 257

HOUSE ENROLLED ACT NO. 111.

An act to amend sections seven, ten, fourteen and twenty-five of act number three hundred of the Public Acts of nineteen hundred nine, entitled "An act to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan railroad commission, define the powers and duties thereof, and to prescribe penalties for violations hereof" and to add a new section thereto to stand as section two.

The People of the State of Michigan enact:

Section 1. Sections seven, ten, fourteen and twenty-five of act number three hundred of the Public Acts of nineteen hundred nine, entitled "An act to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan railroad commission, define the powers and duties thereof, and to prescribe penalties for violations hereof," are hereby amended to read as follows:

Section 7. (a) All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines; Provided, Precedence may be given to live stock and

perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting lines as may be directed and required by such shipper. When freight is shipped in intrastate commerce and any person or officer or agent of any corporation or company who shall deliver property for transportation does not prescribe over what connecting line such property shall be transported, it shall be the duty of the initial carrier to so route the freight as to give the property the benefit of the lowest freight published between points of origin and destination;

(b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission, may upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general condition, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes;

(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be

drawn or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interest of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised;

(d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting lines when required so to do: Provided, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination.

Section 10. (a) Every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection in each of its depots and offices, schedules showing all rates, fares and charges for transportation, both of passengers and property, between different points in its own route, and between points on its own route and on the route of any other carrier, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid the separately established rates, fares and charges applied to the through transportation. The

schedules printed as aforesaid by any common carrier, shall plainly state the places between which property and passengers will be carried and shall contain the classification of freight in force and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect or determine any part of or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passengers, shipper or consignee: Provided, That where local switching tariffs are in effect at a competitive point, it shall be sufficient if the schedule state that the terminal charges shall be subject to the rules of such local switching tariffs. Such schedules shall be printed plainly in large type, and copies for the use of the public shall be kept on file for public inspection in every depot, station or office of such carrier where passengers or freight respectively are received for transportation or where tickets are sold, in such form that they will be accessible to the public and can conveniently be inspected. The provisions of this section shall apply to all traffic and transportation and facilities defined in this act;

(b) No change shall be made in the schedule of rates, fares or charges or joint rates, fares or charges which have been filed and published by common carriers in compliance with the requirements of this section, except after ten days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule of rates, fares or charges or joint rates, fares or charges, then in force and the time when such changed rates, fares or charges or joint rates, fares or charges will go into effect, and no such rates, fares or charges or joint rates, fares or charges shall be discontinued except after giving such notice as is required for changing rates, fares or charges or joint rates, fares or charges, and the proposed changes in such rates, fares or charges or joint rates, fares or charges shall be shown by printing and filing new tariffs thereto or by showing such changes or discontinuance by issuing and filing of supplements in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may, in its discretion and for good cause shown, allow changes upon less time than the notice herein specified, or modify the requirements in this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions:

Provided further, That upon the filing with the commission by a common carrier of any tariff or supplement showing any change in rates, fares or charges or joint rates, fares or charges or a discontinuance of any rate or rates, fares or charges or joint rates, fares or charges, it shall be lawful for the said commission and it is hereby authorized acting upon its own initiative or upon complaint to postpone the date when such new rate or rates or joint rates, fares or charges or discontinuance of rate or rates or joint rates, fares or charges, shall become effective to such time not to exceed in all forty-five days as shall give the said commission opportunity to investigate the reasonableness of such proposed rate or rates or discontinuance of rate or rates, and it shall thereupon be lawful for said commission and it is hereby authorized to proceed with all convenient speed with an investigation upon at least five days' notice to said common carrier either upon its own initiative or upon complaint as to the reasonableness of said rate or rates, or the discontinuance of said rate or rates, follow the procedure as near as may be, and make its order therein in the manner hereinafter provided in section twenty-two of this act, such investigation to take precedence of all matters of a different nature pending before the commission.

(c) The names of the several carriers which are parties to any joint tariff shall be specified therein and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission, and where evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties;

(d) The commission may determine and prescribe the form in which the schedules required by this section to be kept open to the public inspection shall be prepared and arranged and may change the form from time to time as may be found expedient;

(e) Such schedules shall, so far as is practicable, conform to the forms prescribed by the interstate commerce commission;

(f) No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act, nor shall any carrier charge or demand or collect or

receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith between the points named in such fares and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privilege or facilities in the transportation of persons or property, except such as are specified in such tariff;

(g) Within six months after the delivery of any shipment of freight at destination any person aggrieved may complain to the commission that the charge exacted for the transportation of such freight between points in Michigan is irregular or exorbitant, and thereupon the commission shall have power to investigate such complaint, and to hear the same and to decide upon the merits thereof, in the manner provided by section twenty-two of this act. If, upon such hearing, the commission shall decide that the rate or charge exacted is irregular or exorbitant it shall find what, in its judgment, would have been a reasonable rate or charge for the service complained of. If the rate or charge so found shall be less than the charge exacted the carrier shall have the right to refund to the person paying such charge the amount so found to be excessive. In case of the refusal of the carrier to make such refund, the party aggrieved thereby may maintain an action in the courts of this state to recover the amount of such excessive charge as found by said commission, and in the trial thereof the findings of the commission shall be prima facie evidence of the truth of the facts found by it, and no carrier shall be permitted to avail itself of the defense of such action that the shipment involved was in fact made on the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the commission or pursuant to a judgment of court as herein provided, shall be liable for any penalty or forfeiture, or subject to any prosecution under the laws of this state on account of making such refund;

(h) In time of war or threatened war preference and precedence shall, upon the demand of the governor of the state, be given over all other traffic to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic;

(i) Every common carrier within this state shall within ninety days, unless further time be granted by the commission, file in the office of the commission copies of all schedules of

rates, including joint rates in force on its line or lines between points within this state on the date this act takes effect, not previously filed by such carrier with the Michigan railroad commission.

Section 14. The commission shall have control and jurisdiction over all sidetracks, spurs and branches insofar as the same are used or operated by common carriers. No change or discontinuance in the service from, to or on such sidetracks, spurs and branches or abandonment or removal of said sidetracks, spurs or branches, except sidetracks or spurs solely required for the convenient operation of its engines and trains and private industrial sidetracks, shall be made except after ten days' notice to the commission and to the public published as aforesaid, which shall plainly state the change or discontinuance proposed to be made in such service or the sidetrack, spur or branch proposed to be abandoned or removed and the time when such change, discontinuance or abandonment or removal will go into effect; and the proposed change, discontinuance or abandonment or removal shall be shown by printing and filing new tariffs or notice thereof or by showing such change, discontinuance or abandonment or removal by issuing and filing supplements or notice in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may allow changes upon less time than the notice herein specified or modify the requirements in this section in respect to publishing and posting of tariffs either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: Provided further, That it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such change, discontinuance or abandonment or removal shall become effective to such time not to exceed in all forty-five days as shall give the said commission opportunity to investigate the reasonableness of such proposed change, discontinuance or abandonment or removal, and it shall thereupon be lawful for such commission, and it is hereby authorized to proceed with all convenient speed with an investigation upon at least five days' notice to said common carrier, either upon its own initiative or upon complaint as to the reasonableness of said change, discontinuance or abandonment or removal, and shall follow the proceedings as near as may be and make its orders thereon either approving or refusing such change, discontinuance or abandonment or removal, or prescribing the terms and conditions upon which such change, discontinuance or abandonment or removal shall be made, in the

manner hereinafter provided in section twenty-two of this act, such investigation to take precedence of all matters of a different nature pending before the commission, except investigations as to change or discontinuance of rates, fares or charges or joint rates, fares or charges then pending before said commission.

Section 25. All rates, fares, charges, classification and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section twenty-six of this act, or until changed or modified by the commission as provided for in section twenty-four of this act.

(a) It shall be unlawful for any express company operating or doing business in the state of Michigan to charge or collect a greater amount for the transportation of merchandise or other property within this state than the rates and charges set forth and contained in the schedule of rates, tariffs and classifications on file at each station and office to or from which said rates, tariffs and classifications are intended to apply; a copy of which said schedule of rates, tariffs and classifications shall be filed with the railroad commission by the issuing carrier or some duly authorized agent or representative of such carrier;

(b) It shall be unlawful for any express company operating and doing business in the state of Michigan to discriminate in favor of or against any shipper or shippers or to refuse or fail to receive and transport proffered merchandise or other property, providing such merchandise or other property is a proper subject for shipment by express and in proper condition at the time of presentation for shipment from any point where such express company shall maintain or conduct an office or station, or to or from any junction point or points where the line of such express company intersects with the line of any other express company or to or from any common terminal to any point on its own line, and the charge and compensation for the transportation of such merchandise or other property by two or more express companies shall not exceed by thirty per cent the maximum charge for the same distance on any one line, such maximum charge being determined as hereinafter prescribed:

(c) All express companies operating within this state shall publish and continue in force and effect through or joint rates between all points at which offices are maintained on the

Line of all express companies operating within the state of Michigan: Provided, That such express companies may divide charges for transportation in such a manner as to allow participating carriers an agreed minimum proportion when the division of such charges on a mileage basis would not allow a sufficient minimum;

(d) The following schedule of rates shall be the present maximum basic general merchandise schedule chargeable within the state of Michigan:

One to fifty-five miles inclusive, fifty cents per one hundred pounds;

Fifty-six to seventy-five miles inclusive, fifty-five cents per one hundred pounds;

Seventy-six to eighty-five miles inclusive, sixty cents per one hundred pounds;

Eighty-six to ninety-five miles inclusive, sixty-five cents per one hundred pounds;

Ninety-six to one hundred five miles inclusive, seventy cents per one hundred pounds;

One hundred six to one hundred thirty miles inclusive, seventy-five cents per one hundred pounds;

One hundred thirty-one to one hundred fifty miles inclusive, eighty cents per one hundred pounds;

One hundred fifty-one to one hundred seventy miles inclusive, eighty-five cents per one hundred pounds;

One hundred seventy-one to one hundred ninety miles inclusive, ninety cents per one hundred pounds;

One hundred ninety-one to two hundred ten miles inclusive, one dollar per one hundred pounds;

Two hundred eleven to two hundred thirty miles inclusive, one dollar ten cents per one hundred pounds;

Two hundred thirty-one to two hundred fifty miles inclusive, one dollar twenty cents per one hundred pounds;

Two hundred fifty-one to two hundred seventy-five miles inclusive, one dollar thirty cents per one hundred pounds;

Two hundred seventy-six to three hundred miles inclusive, one dollar forty cents per one hundred pounds;

(e) The graduated table or schedule of charges now in force relating to shipments of merchandise or other property in quantities less than one hundred pounds shall continue in operation except as hereinafter provided;

(f) The Michigan railroad commission shall have control and supervision over all express companies operating within this state, and upon complaint made to it or upon its own motion and after hearing had thereon, in accordance with the

rules now in force relative to hearings on complaints by and against common carriers, may from time to time within its discretion change, alter and amend the maximum schedule of rates hereinbefore set forth, and may from time to time upon proper application or upon its own motion and hearing had thereon, as above prescribed, change, alter and amend any graduated table or schedule of charges on merchandise or other property transported or to be transported, the weight of which is less than one hundred pounds;

(g) Any express company operating or doing business within the state of Michigan, upon receipt of any property, or merchandise, providing such property or merchandise is a proper subject for shipment by express and in proper condition at time of presentation, shall unless otherwise requested by the shipper forward same via the nearest and most practical route, having in mind the frequency of train service at different junction points.

Section 2. This act is immediately necessary for the preservation of the public peace and safety.

This act is ordered to take immediate effect.

H. F. Baker,
Speaker of the House.
John Q. Ross,
President of the Senate.

Approved April 25, 1911.
Chase S. Osborn.
Governor.

STATE OF MICHIGAN.

DEPARTMENT OF STATE.

I, Frederick C. Martindale, Secretary of State of the State of Michigan and custodian of the Great Seal of the State, hereby certify, that the attached is a correct and compared transcript of House Enrolled Act No. 111, approved April 25, 1911, the original of which is on file in this office.

In Witness Whereof, I have hereto affixed my signature and the great Seal of the State, at Lansing, this fourth day of April in the year of our Lord nineteen hundred twelve.

(Great Seal of State.)

Frederick C. Martindale,
Secretary of State.
By D. H. Mills,
Deputy Secretary of State.

EXHIBIT C.

LOCAL FREIGHT TARIFF No. 502-A.

Only two Supplements to this Tariff will be in effect at any time

I. C. C. No. A-1428
(See page 2 for cancellations)

M. R. C. No. 236
(See page 2 for cancellations)

Reissue—Advance

GRAND TRUNK RAILWAY SYSTEM
(Lines West of Detroit and St. Clair Rivers)
TARIFF No. 502-A
(See page 2 for cancellations)
LOCAL FREIGHT TARIFF
Naming
SWITCHING RATES
And Rules Governing
ABSORPTION OF SWITCHING CHARGES
On Carload Traffic
—Also—
TRANSFER EXPENSE
On Less Carload Traffic
Between
DEPOTS OF THIS COMPANY
—And—
DEPOTS OF CONNECTING CARRIERS
—At—
POINTS IN MICHIGAN
As Specified Herein

Issued July 29, 1911
R. L. Burnap,
Assistant General Freight Agent, G. T. Ry. System
Chicago, Ill.

Effective September 1, 1911
Chas. Clarke,
Division Freight Agent, G. T. Ry. System,
Detroit, Mich.

Ira W. Gantt,
Assistant General Freight Agent, G T. Ry. System,
Buffalo, N. Y.

Issued by H. C. Martin,
2nd Assistant General Freight Agent, G. T. Ry. System, Chicago, Ill.

TA-89

To be posted in Tariff Binder "H," page 12

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ALPHABETICAL LIST OF POINTS AT WHICH RATES AND RULES NAMED HEREIN APPLY

STATION		Pages
Ashley	Mich.	5
Battle Creek	Mich.	6 and 7
Bay City	"	8 to 10
Cassopolis	Mich.	11
Cedar Springs	"	12
Charlotte	"	13
Chesterfield	"	14
Corunna	"	14
Detroit	Mich.	15 to 26
Durand	"	27
Ferrysburg	Mich.	28
Flint	"	28 and 29
Fort Gratiot	"	55 and 56
Fuller	"	30
Grand Haven	Mich.	31
Grand Rapids	"	32 to 35
Greenville	"	36
Holly	Mich.	37
Imlay City	Mich.	38
Ionia	"	39
Jackson	Mich.	40 and 41
Kalamazoo	Mich.	42 to 44
Lakeland	Mich.	45
Lansing	"	46 and 47
Lapeer	"	48
Lenox	"	49
Lowell	"	50
Milwaukee Jct.	Mich.	15 to 26
Muskegon	"	51 and 52
Owosso	Mich.	53
Pontiac	Mich.	54
Port Huron	"	55 and 26
Port Huron Tunnel	"	55 and 56
Rochester	Mich.	57
Saginaw	Mich.	58 to 60
Schoolcraft	"	61
Sheridan	"	62
South Lyon	"	63
Sparta	"	64
Trowbridge	Mich.	65
Vernon	Mich.	66
Vicksburg	"	66
West Detroit	Mich.	15 to 26
Wixom	"	67

LIST OF ABBREVIATIONS

A. A.....Ann Arbor.
C. K. & S.....Chicago, Kalamazoo & Saginaw.
C. N.....Cincinnati Northern.
Co.....Company.
D. & C.N.....Detroit & Cleveland Navigation.
Del. Ter.....Delray Terminal.
D. M.....Detroit Manufacturers.
D. & M.....Detroit & Mackinac.
D. & T. S. L..Detroit & Toledo Shore Line.
D. T.....Detroit Terminal.
D. T. & I.....Detroit, Toledo & Ironton.
D. & W.....Detroit & Western.
G. R. & I.....Grand Rapids & Indiana.
G. T.....Grand Trunk.
I. C. C.....Interstate Commerce Commission.
Jct.....Junction.
K. L. S. & C..Kalamazoo, Lake Shore & Chicago.
L. M.....Lansing Manufacturers.
L. S. & M. S..Lake Shore & Michigan Southern.
M. C.....Michigan Central.
Mich.....Michigan.
M. R. C.....Michigan Railway Commission.
No.....Number.
O. C.....Official Classification.
P. H. S.....Port Huron Southern.
P. M.....Pere Marquette.
P. O. & N....Pontiac, Oxford & Northern.
R. R.....Railroad.
Ry.....Railway.
Wab.....Wabash.

Exhibit C.

SWITCHING CHARGES AT POINTS IN MICHIGAN

Rule 1: The Grand Trunk Railway System will absorb the published switching charges of carriers at points named herein subject to the amounts indicated on pages 5 to 67 as a maximum under the following conditions:

(a) On carload traffic originating at or destined to a point on this System—provided the freight revenue of this System is not reduced by such absorption below $10.00 per car:

(b) On carload traffic from or to points on other railways, provided the freight revenue of this System and its connections is not reduced by such absorption below $10.00 per car:

Illustration:

Where the revenue of this System, or of this System and connections is .....$12.00 per car

If switching charge of connecting line is $5.00 per car, it will be permissible to absorb..... 2.00 per car

Freight revenue of this System or of this System and its connections ..... 10.00 per car

$3.00 per car will be collected in addition to the freight charge.

Agents of this System at forwarding or junction points will indicate on their billing the amount of switching absorbed at such points, thus enabling the Agent of this System at destination to comply fully with the above regulations.

(c) If the tariffs of this System or of its connections provide that the published rate will not include switching charges at either point of origin or destination, this System will not absorb any switching charges on traffic covered by such tariffs.

NOTES

Note 1: The freight traffic of this System originating at and received at stations named herein requires for its proper handling all of its team track facilities; in case team track deliveries are required for the unloading of

shipments received from other carriers, or when such team tracks are used for the loading of shipments for delivery to other carriers, $3.00 per car in excess of the charge made for switching to or from industrial sidings will be assessed.

Note 1-A: On inbound traffic received via this System requiring team track delivery on the lines of other carriers or upon outbound traffic loaded on team tracks of other carriers and forwarded via this System, $3.00 per car in excess of the amount absorbed for switching to or from industrial sidings will be absorbed by this System, out of the through rate, subject to Rule 1.

* * * * *

Note 10: On traffic switched to or from industries having industrial sidings on the Grand Trunk Railway System, originating at or destined to industries located on another carrier within the boundaries of the same town or city the charge of this System for such movement will be $3.00 per car.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.

(Notes 4 and 5)

AND	BETWEEN GRAND TRUNK RAILWAY SYSTEM						
	Medium of Interchange		Cost of Transfer in Cents per 100 Lbs. On Less Carload Traffic			Distance Between Freight Depots	Note Reference
	Carload Traffic	Less Carload Traffic	Household Goods	General Merchandise	Minimum, if any, per Shipment		
Anchor Line	(Dock or (Dray	Dray	3	3	5	.....	.....
Ashley & Dustin Line	(Dock or (Dray	Dray	3	3	5	.....	.....
Delray Connecting Ry.	(M.C., P.M., (or Wabash	Not interchanged	.....	.....	.....	.....	.....
Delray Terminal Ry.	Wabash	Not interchanged	.....	.....	.....	.....	.....
Detroit Manufacturers R. R.	(Direct (connection	Dray	.....	.....	.....	.....	Note 4
Detroit Terminal R. R.	(Direct (connection	Not interchanged	.....	.....	.....	.....	.....
‡Detroit, Toledo & Ironton Ry.	(M.C., Wab. (and Del. (Con. Ry.	Dray	3	3	5	.....	Note 2
‡Detroit & Toledo Shore Line R. R.	(Direct (connection	Joint station	No charge	No charge		.....	.....

Detroit & Western Ry	Wabash	Not interchanged					
‡Lake Shore & Michigan Southern Ry.	Direct connection	Dray	3	3	5		Note 2
‡‡Michigan Central R. R.	Direct connection	Dray	3	3	5		Note 2
‡Pere Marquette R. R.	Direct connection	Dray	3	3	5		Note 2
‡Wabash R. R.	Direct connection	Dray	3	3	5		

‡No. L. C. L. traffic interchanged at West Detroit, Mich.
†No L. C. L. traffic interchanged at Milwaukee Jct., Mich.
For explanation of Notes and Rules, see pages 3 and 4.

The rate on **Sand or Gravel** from the Detroit River consigned to Grand Trunk Ry. industrial sidings or team tracks in the city of Detroit, Mich., within the switching limits will be one and one-sixth (1 1/6) cents per 100 pounds, minimum $5.00 per car for industrial sidings and $8.00 per car for team tracks.

In all cases empty cars will be switched free in the reverse direction when charge is collected on loaded movement

SWITCHING TO OR FROM INDUSTRIES ON GRAND TRUNK SYSTEM TRACKS

The charge for switching of carload traffic from one to another industry having private sidings or from one hold or team track to another hold or team track on Grand Trunk Ry. System tracks within switching limits at Detroit, Mich., will be $5.00 per car.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued

(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Abbott Motor Car Co.	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Acme Box Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Acme Foundry Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Acme White Lead & Color Works.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
A. D. Manufacturing Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Alden Sampson Mfg. Co.	G.T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Allen Bros.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Allyne Brass & Foundry Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Alluminum Casting Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
American Agricultural Chemical Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
American Agricultural Chemical Co.	L.S.& M.S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
American Blower Co.	L.S.& M.S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
American Blower Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
American Brass & Iron Works.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
American Bridge Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
American Calk Co.	D. M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
American Car & Foundry Co.	D. J.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....

American Car & Foundry Co. (Michigan Plant)	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	5.00		5.00
American Car & Foundry Co.	L.S. & M.S.									
American Car & Foundry Co. (Michigan Dept.)	L.S. & M.S.							5.00		5.00
American Car & Foundry Co. (Penna. Dept.)	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	5.00		5.00
American Can Co.	Wab.									
American Harrow Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	5.00		5.00
American Harrow Co.	M.C.									
American Injector Co.	M.C.							5.00		5.00
American Linseed Oil Co.	D.M.							5.00		5.00
American Malting Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	2.25		2.25
American Motor Castings Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Naval Stores Co.	M.C.									
American Radiator Co. (Detroit Plant).	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	5.00		5.00
American Radiator Co. (Michigan Plant)	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Wood Grain Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Anderson Carriage Co.	M.C.									
Anderson Forge & Mach Co.	D.T.							5.00 *		5.00 *
Anheuser-Busch Co.	P.M.									
Anketell Lumber & Coal Co.	D.T.							5.00 *		5.00 *
Anschutz, J. C.	M.C.									
Armstrong Tanning Co.	D.T.							5.00 *		5.00 *
Armstrong Woolen Co.	D.T.							*		*
Art Stove Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Auto Parts Mfg. Co.	M.C.							5.00		5.00
Ayres & Chase	P.M.							5.00		5.00
Aylward, Richard L.	P.M.							5.00		5.00
Aylward, R. L.	Wab.							5.00		5.00
Bagley Tobacco Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Baier, Wm.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Bailey Coal Co.	M.C.									
Barnes Motor Car Co.	M.C.							5.00		5.00
Barrett Mfg. Co.	P.M.							5.00		5.00
								5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry., or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Bartholomaei, Max	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Bartlett Co., The	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Bartlett Co., The	D. T.									
Bartlett Co., The	M. C.							*		*
Beaubien Ice & Coal Co.	P. M.							$5.00		$5.00
Beaubien Ice & Coal Co.	Wab.							$5.00		$5.00
Beck Cereal Co.	P. M.							$5.00		$5.00
Beck Cereal Co.	Wab.							$5.00		$5.00
Beebe, H. A. & Co.	M. C.							$5.00		$5.00
Berry Bros.	D. M.							$5.00		$5.00
Besancon, Geo., & Son	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00	2.25		2 25
Besancon, W. E.	L. S. & M.S.									
Besancon, W. E.	M. C.							$5.00		$5.00
Beyster, John	M. C.							$5.00		$5.00
Beyster, John F.	Wab.							5.00		5.00
Board of Public Works (East Yd.)	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00	$5.00		$5.00
Board of Public Works (West Yd.)	M. C.									
Board of Water Commissioners	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00	$5.00		$5.00
Bechtel & Barrett	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Bowen, W. F.	M. C.							$5.00		$5.00
Bower Roller Bearing Co.	D. T.							*		*
Bradford, J. & Co.	M. C.									

Brandy, M. & Son	P. M							$5.00		$5.00
Braun Lumber Co	D. T									
Brenner Coal Co	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Brennan, John, & Co	M. C							$5.00		$5.00
Briscoe Mfg. Co	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Briggs Mfg. Co	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Brown & Brown Coal Co	M. C							$5.00		$5.00
Brown & Brown Coal Co	G. T	5.00	Note 1	$4.00	$5.00	$5.00	$5.00			
Brownlee & Kelly	M. C							$5.00		$5.00
Brush Runabout Co	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Buchanan & Huff	L. S. & M. S							$5.00		$5.00
Buchanan & Huff	M. C							$5.00		$5.00
Buhl Malleable Co	D. M							2.25		2 25
Byram & Co	D. M							2.25		2 25
Cadillac Cabinet Co	G. T	5.00	Note 1	$4.00	$5.00	$5.00	$5.00			
Cadillac Coal & Coke Co	M. C							$5.00		$5.00
Cadillac Motor Car Co. (Fdry Dept)	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Cadillac Motor Car Co	M. C							$5.00		$5.00
Caille Co., The	M. C							$5.00		$5.00
Caille Perfection Motor Co	M. C							$5.00		$5.00
Calvert, J. & Sons	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Calvert, J. & Sons	L. S. & M. S							$5.00		$5.00
Calvert, J. & Son	M. C (W. Yd.)							$5.00		$5.00
Calvert, J. & Son	M. C (E. Yd.)							$5.00		$5.00
Campbell Fanning Mill Co	Wab							$5.00		$5.00
Campbell R. Manson Co	Wab							$5.00		$5.00
Canada Malt Co	Wab							$5.00		$5.00
Canny, C. C., Coal Co	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Capitol Brass Works	D. M							2.25		2 25
Card Lumber & Mfg. Co	M. C							$5.00		$5.00
Cardonia Monumental Works	Wab							$5.00		$5.00
Caughey & Curran	M. C							$5.00		$5.00
Caughey & Curran	P. M							$5.00		$5.00
Central Foundry Co	G. T	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

Exhibit C.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued

(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T. S. L. R.R. & L.R.R., L. S. & M. S. Ry., M. C. R.R., P. M. R.R., Wab. R.R. at West Detroit, Mich., or M. C. R.R. at Milw. Jct., Mich. Note 10	L. S. & M. S. Ry. or Wab. R.R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R.R. Detroit Terminal R.R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Central Heating Co.	M. C.							$5.00		$5.00
Chalmers Motor Co.	D. T.							*		*
Chicago Pneumatic Tool Co. (Boyer Plant)	M. C.							5.00		5.00
Chicago R. R. Equipment Co.	M. C.							5.00		5.00
Chicago R. R. Equipment Co.	Wab.							5.00		5.00
Chicago R. R. Equipment Co.	P. M.							5.00		5.00
Christa, P., S Sons	M. C.							5.00		5.00
City Lumber Co.	M. C.							5.00		5.00
City Lumber Co.	D. T.							5.00		5.00
City of Detroit Public Lighting Commission Power House	G. T.	$5.00	Note 1	$5.00	$5.00	$1.00	$5.00	*		*
City of Detroit, Board of Water Commissioners	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Clark, W. C., Coal Co.	Wab.							.....	.....	.....
Clayton & Lambert Mfg. Co.	M. C.							5.00		5.00
Cleveland Trin'd Paving Co.	D. M.							5.00		5.00
Clifford, J. M. & Sons	M. C.							2.25		2.25
Clifford, Geo. H. & Bro., Brick Co.	P. M.							5.00		5.00
Clifford & Bro. Brick Co., Geo.	M. C.							5.00		5.00

COPY BOUND

Co-operative Foundry Co.	P. M.							5.00		5.00
Co-operative Foundry Co.	Wab.							5.00		5.00
Corcoran, Thos. J.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Cornellie Bros.	D. T.							*		*
County Road Commissioner (Gratroit Ave. delivery)	D. T.							*		*
County Road Commissioner (Jefferson Ave. delivery)	D. T.							*		*
Cowles & Danziger	M. C.							5.00		5.00
Crescent Brass & Pin Co.	M. C.							5.00		5.00
Crystal Ice Co.	P. M.							5.00		5.00
Currie, G. E.	M. C.							5.00		5.00
Currie Cement & Coal Co.	D. M.							2.25		2 25
Currie, W. E.	D. M.							2.25		2.25
Curtis & Yale	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Daniel, Jacob, & Bro.	M. C.							5.00		5.00
DeCaussin & Susick	D. T.							*		*
Delahanty & Kennedy	M. C.							5.00		5.00
Delray Connecting Ry., Team Tracks	D. C.							2.00	5.00	7.00
Delray Ice House	Wab.							5.00		5.00
Delray Salt Co.	M. C.							5.00		5.00
Delray Terminal Ry., Team Tracks	Del. Ter.							2.00	5.00	7.00
Detroit Terminal Ry., Team Tracks	D. T.							*		*
De Man Bros.	M. C.							5.00		5.00
Department of Public Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit & Suburban Gas Co.	P. M.							5.00		5.00
Detroit Barrel Co.	M. C.							5.00		5.00
Detroit Bath Tub & Brass Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Beef Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Bending Co.	M. C.							5.00		5.00
Detroit Boat Co.	D. M.							2.25		2.25
Detroit Brass Works	M. C.							5.00		5.00
Detroit Bridge & Steel Works	M. C.							5.00		5.00
Detroit Cabinet Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Can Co.	Wab.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R., D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Detroit Car Building and Equipment Co.	M. C.									
Detroit Carriage Co.	G.T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	$5.00	.....	$5.00
Detroit Chemical Works	Wab.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Detroit Chemical Works	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit City Electric Light Plant.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	5.00	.....	5.00
Detroit City Gas Co. (A.)	Wab.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Detroit City Gas Co. (B.)	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit City Gas Co., "Station A"	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Coalette & Fuel Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Column & Mfg. Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Concrete & Stone Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Copper & Brass Rolling Mills	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Copper & Brass Rolling Mills	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Edge Tool Works	D. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Edison Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Fire Proof Tile Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Forging Co.	D. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00

Detroit Foundry Supply Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Furnace Co.	M. C.							5.00		5.00
Detroit Furniture Mfg. Co.	M. C.							5.00		5.00
Detroit Gas Light & Coke Co.	Wab.							5.00		5.00
Detroit Hay Co.	M. C.							5.00		5.00
Detroit Heating & Lighting Co.	D. M.							2.25		2.25
Detroit Hoist & Machine Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Insulated Wire Co.	P. M.							5.00		5.00
Detroit Iron Furnace Co.	M. C.							5.00		5.00
Detroit Iron & Steel Co.	M. C.							5.00		5.00
Detroit Iron & Steel Co.	Del. Con.							2.00	5.00	7.00
Detroit Kraut Co.	D. & W.							2.50	5.00	7.50
Detroit Linseed Oil Works	D. M.							2.25		2.25
Detroit Lubricator Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Lumber Co.	D. T.							*		*
Detroit Lumber Co.	M. C.							5.00		5.00
Detroit Lumber Co.	D. M.							2.25		2.25
Detroit Manufacturers R. R., Team Tracks	D. M.							2.25		2.25
Detroit Manufacturers R. R., connection with Grand Trunk				5.00	5.00	1.00				
Detroit Mirror Works	M. C.							5.00		5.00
Detroit Motor Car Supply Co.	D. M.							2.25		2.25
Detroit Oak Belting Co.	D. M.							2.25		2.25
Detroit Railroad Elevator Co.	G. T.	5.00	Note 1	5.00	5.00	1.00	5.00			
Detroit Range Boiler Co.	M. C.							5.00		5.00
Detroit Reduction Co.	Wab.							5.00		5.00
Detroit River Canoe Works	D. M.							2.25		2.25
Detroit River Iron Works	D. M.							2.25		2.25
Detroit Roofing Tile Co.	M. C.							5.00		5.00
Detroit Salt Co.	D. & W.							2.50	5.00	7.50
Detroit Salt Co.	Wab.							5.00		5.00
Detroit Salt Co.	M. C.							5.00		5.00
Detroit Sanitary Co.	P. M.							5.00		5.00
Detroit Sanitary Works	Wab.							5.00		5.00
Detroit Screw Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D. T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Detroit Seamless Steel Tube Co.	Wab.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Detroit Seamless Steel Tube Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Shear Co.	G.T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Detroit Sheet Metal & Brass Works.	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Ship Building Co.	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Ship Building Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Detroit Soap Co.	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Steel Casting Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Steel Cooperage Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Steel Products Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Stoker Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Detroit Stove Works	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Sulphite Fibre Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Sulphite Pulp & Paper Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Terminal R. R., Team Tracks	D. T.	.....	.....	.....	.....	.....	.....	(Note	.....	(Note

Detroit Union Elevator Co.	Wab.							(1-A) 5.00		(1-A) 5.00
Detroit United Railway	M. C.							5.00		5.00
Detroit United Railway	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit United Railway	D. T.							*		*
Detroit United Railway (Power House A)	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit United Railway (Power House B)	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Vapor Stove Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Vitrified Brick Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit & Western Ry., Team Tracks.	D. & W.							2.50	5.00	7.50
Detroit White Lead Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Wire-Bound Box Co.	M. C.							5.00		5.00
Detroit Wire Spring Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Wooden Pulley Co.	M. C.							5.00		5.00
Diamond Match Co.	M. C.							5.00		5.00
Dickinson, H. H.	L.S.& M.S.							5.00		5.00
Dickinson, H. H.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Dodge Bros.	M. C.							5.00		5.00
Dunbar Stone Co.	M. C.							5.00		5.00
Dupuis, A. J., Co.	D. M.							2.25		2.25
Dwight Lumber Co.	M. C.							5.00		5.00
East End Boiler Works	D. M.							2.25		2.25
Eaton, T. H., & Son	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Eby Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Edgar, W. H., & Son	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Edgar, W. H., & Son	M. C.							5.00		5.00
Edison Illuminating Co.	Del. Ter.							2.00	5.00	7.00
Edison Illuminating Co.	M. C.							5.00		5.00
Edison Illuminating Co.	P. M.							5.00		5.00
Elevator "A"	M. C.							5.00		5.00
Elevator "B"	M. C.							5.00		5.00
Elevator "C"	M. C.							5.00		5.00
Elevator "L"	M. C.							5.00		5.00
E. M. F. Co.	P. M.							5.00		5.00
Enterprise Foundry Co.	M. C.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.
For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Epstein, A.	G.T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Esper, A., & Son	P.M.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Esper & Ford Chemical Co.	P.M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Everett Metzger Flanders Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fairview Coal & Supply Co.	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Fairview Foundry Co.	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Fairview Lumber Co.	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Farrand Company	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Felrath, John	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fisher, Hughes, Gelatine Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fisher Body Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fitzpatrick Bros.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Ford Motor Co.	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Ford Motor Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Foreman, Thomas, Lumber Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00

Foreman, Thos., Co	M. C.							5.00		5.00
Fox Bros. & Co.	Wab.							5.00		5.00
Freer, John	P. M.							5.00		5.00
[illegible] Bros., & Co.	M. C.							5.00		5.00
George, J. D.	D. T.							*		*
Ginsburg, R. L., & Sons	D. M.							2.25		2.25
Ginsburg & Son, R. L.	M. C.							5.00		5.00
Glass Enameled Package Co.	D. T.							*		*
Goldman, A., & Co.	M. C.							5.00		5.00
Goldman, H. L.	D. M.							2.25		2.25
Grabowsky Power Wagon Co.	M. C.							5.00		5.00
Grace Harbor Lumber Co.	Wab.							5.00		5.00
Grace Harbor Lumber Co.	P. M.							5.00		5.00
Grant Iron & Metal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Gratiot Lumber & Coal Co.	D. T.							*		*
Gray Motor Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Great Lakes Engineering Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Great Lakes Engineering Works	M. C.							5.00	.....	5.00
Greenberg Bros.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Greenslade Oil Co.	M. C.							5.00	.....	5.00
Griffin Car Wheel Co.	M. C.							5.00	.....	5.00
Griggs & Hanna	M. C.							5.00	.....	5.00
Grosse Pointe Lumber Co.	D. T.							*		*
Gutow, W. C.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Haggerty, J. S.	P. M.							5.00	.....	5.00
Hammond Beef Co.	M. C.							5.00	.....	5.00
Hammond Standish Co.	M. C.							5.00	.....	5.00
Harding Lumber Co., H. W.	D. T.							*		*
Harrell & Nicholson Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Harrison, F. W., & Bro.	M. C.							5.00	.....	5.00
Harton-Cato Manufacturing Co.	M. C.							5.00	.....	5.00
Hartwick Lumber Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hasty, J. F., & Co.	M. C.							5.00	.....	5.00
Hayes Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hees, McFarlane Co.	M. C.							5.00	.....	5.00
Herreshoff Motor Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hertz & Hosbach Co.	M. C.							5.00	.....	5.00
Hitchcock, H. C.	M. C.							5.00	.....	5.00
Holmes, F. B., & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Holmes, F. B., & Co.	M. C.							5.00	.....	5.00
Home Telephone Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.
For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Home Telephone Co.	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Houghton, Henry	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Houghton, Henry, Lime & Cement Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Houghton, Henry & Sons	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Houghton, Henry	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Houghton-French Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Houghton, Wm. C.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hudson Motor Car Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Hudson Motor Car Co.	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Huebner Mfg. Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Huebner Screen Door Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Huetteman & Cramer Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Humphrey-Widman Book Case Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hunton, Myles & Weeks	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00

Hunter & Works	M. C.							5.00		5.00
Hunter & Works	D. M.							5.00		5.00
Hupp-Ellis-Geyman Foundry Co.	D. T.									
Hupp-Johnson Forge Co.										
Hupp-Ellis-Rutley Co.										
Hupp-Yeats Electric Car Co.										
Hurd, W. F., & Co.	M. C.							5.00		5.00
Hurley, J. & T.	D. M.							2.25		2.25
Hurley, J. & T.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Hurley, J. & T.	L. S. & M. S.							5.00		5.00
Hurley, J. & T.	M. C.							5.00		5.00
Huron Portland Cement Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Hutchins Car Roofing Co.	M. C.							5.00		5.00
Ideal Mfg. Co.	D. M.							2.25		2.25
Independent Brewing Co.	M. C.							5.00		5.00
International Harvester Co.	M. C.							5.00		5.00
Ireland & Matthews Mfg. Co.	D. M.							2.25		2.25
Jacob Bros.	M. C.							5.00		5.00
Jenks & Muir Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Jenks & Muir Mfg. Co.	Wab.							5.00		5.00
Jewett, Bigelow & Brooks	M. C.							5.00		5.00
Jozefiak, I. E.	M. C.							5.00		5.00
Kahl, Fred	D. M.							2.25		2.25
Kastner Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Kelsey Wheel Co.	P. M.							5.00		5.00
Kemiweld Can Co.	M. C.							5.00		5.00
Knack, Julius	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Keonig, P., Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Koenig, P. Coal Co.	M. C.							5.00		5.00
Kotcher, C. W.	D. M.							2.25		2.25
Kraft, John, Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Krentler Bros.	M. C.							5.00		5.00
Kuschewski, John	P. M.							5.00		5.00
Labadie Ice Co.	P. M.							5.00		5.00
Labadie, Edwin	Wab.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R., D. T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Lake Shore & Michigan South-ern Ry., Team Tracks	L.S.& M.S.	.....	.....	.....	.....	.....	.....	(Note 1-A	.....	(Note 1-A
Lane, Chas. F.	Wab.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Lange, F., & Son	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Larkins Brick Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Lauhoff Bros.	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Lavignee Mfg. Co.	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Lee & Cady	M. C.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Leech, C. W., Lumber Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Leech, E. W.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Lehr, C., Lumber Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Lewis, Henry B.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Litchenberg & Son	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Light House Supply Depot	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Lincoln Ave. Elevator	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Little, C. H., Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Little, C. H., Co.	L.S.& M.S.	.....	.....	.....	.....	.....	.....	(Note 1-A	.....	(Note 1-A

Little, C. H., Co.	M. C.							5.00		5.00
Little, C. H., Co.	D. T.							*		*
Ideal Construction Co.	M. C.							5.00		5.00
Lowrie & Robinson Lumber Co.	Wab.							5.00		5.00
Lowrie & Robinson	M. C.							5.00		5.00
Lozier Motor Co.	D. T.							*		*
Malcomson, A. Y.	M. C.							5.00		5.00
Manufacturers Lumber Co.	D.M.							2.25		2.25
Manzelman, Chas.	M. C.							5.00		5.00
McColgan, Albert	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
McCord Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
McCormick, P. S., & Son	L.S. & M.S.							5.00		5.00
McDonald Brick & Coal Co.	M. C.							5.00		5.00
McDonald Brick & Coal Co.	L.S. & M.S.							5.00		5.00
McFadden, Mark	Wab.							5.00		5.00
McFadden, Mark	M. C.							5.00		5.00
McKerchey, J. M.	M. C.							5.00		5.00
McNamara, Michael	M. C.							5.00		5.00
McRae & Roberts	Wab.							5.00		5.00
McRae & Roberts	P. M.							5.00		5.00
M. D. T. Ice House	M. C.							5.00		5.00
Metzger Motor Car Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Mertz, John G.	M. C.							5.00		5.00
Metal Products Co.	D. T.							*		*
Meyer, R. M.	M. C.							5.00		5.00
Michigan Ammonia Co.	D. M.							2.25		2.25
Michigan Ammonia Works	M. C.							5.00		5.00
Michigan Auto Parts Co.	M. C.							5.00		5.00
Michigan Beef & Provision Co.	M. C.							5.00		5.00
Michigan Bolt & Nut Works	D. M.							2.25		2.25
Michigan Builders' Supply Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Michigan Central R. R., Team Tracks	M. C.							(Note 1-A		(Note 1-A
Michigan Copper & Brass Rolling Mills	M. C.							5.00		5.00
Michigan Carbon Works	L.S. & M.S.							5.00		5.00
Michigan Carbon Works	Wab.							5.00		5.00
Michigan Central Stock Yards	M. C.							5.00		5.00
Michigan Malleable Iron Co.	Wab.							5.00		5.00
Michigan Malleable Iron Co.	M. C.							5.00		5.00
Michigan Malleable Iron Works	P. M.							5.00		5.00

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For explanattion of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Michigan Pressed Brick Co.	M. C.							$5.00		$5.00
Michigan Soap Works	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Michigan Sprocket Chain Co.	M. C.							5.00		5.00
Michigan Sprocket Chain Co.	Wab.							5.00		5.00
Michigan Stamping Co.	M. C.							5.00		5.00
Michigan State Agricultural Soc'y	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Michigan Steel Boat Works	D. M.							2.25		2.25
Michigan Steel Casting Co.	D. T.							*		*
Michigan Stove Co.	D. M.							2.25		2.25
Michigan Wire Cloth Co.	M. C.							5.00		5.00
Millenback Bros.	M. C.							5.00		5.00
Miller, W. A. C. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Mincel, H.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Mistele, G.	M. C.							5.00		5.00
Mitshkum, M. & Co.	M. C.							5.00		5.00
Monagan, J.	M. C.							5.00		5.00
Monarch Foundry Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Monarch Steel Casting Co.	M. C.							5.00		5.00
Monroe Body Co.	P. M.							5.00		5.00
Monroe, Wm. & Co.	M. C.							5.00		5.00
Morgan Sprinkler	M. C.							5.00		5.00

Murphy Iron Works	D. M.							2.25		2.25
Myll, Wm.	D. M.							2.25		2.25
National Can Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	5.00		5.00
National Cutlery Co.	M. C.									
Nelson Morris & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Newton Beef Co.	M. C.							5.00		5.00
Noble & Co.	M. C.							5.00		5.00
Northern Engineering Works	D. M.							2.25		2.25
Northway Motor & Mfg Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Oades, Walter	D. M.							2.25		2.25
Owen Motor Car Co.	M. C.							5.00		5.00
Packard Motor Car Co.	M. C.							5.00		5.00
Parker, A. A., & Bro.	Wab.							5.00		5.00
Parker Bros. Co., Ltd.	Wab.							5.00		5.00
Parke, Davis & Co.	D. M.							2.25		2.25
Parker, Webb & Co.	M. C.							5.00		5.00
Parsons & Hobart	M. C.							5.00		5.00
Paschke, August	M. C.							5.00		5.00
Penberthy Injector Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Peninsular Paint & Varnish Co.	M. C.							5.00		5.00
Peninsular Stove Co.	M. C.							5.00		5.00
Peoples' Ice Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Pere Marquette R. R., Team Tracks	P. M.							(Note C 1-A		(Note C 1-A
Perfection Mfg. Co.	M. C.							5.00		5.00
Pfeiffer Brewing Co.	M. C.							5.00		5.00
Pfeiffer, Conrad	M. C.							5.00		5.00
Phoenix Wire Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Piggins, W. S., & Sons	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Pittmans & Dean Co.	D. T.							*		*
Pittmans & Dean Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Pittmans & Dean Co.	L. S. & M. S.							5.00		5.00
Pittmans & Dean Co.	M. C.							5.00		5.00
Pohlman & Co., Chas.	Wab.							5.00		5.00
Pohlman, Chas.	P. M.							5.00		5.00
Posselius Bros. Furniture Mfg. Co.	M. C.							5.00		5.00
Pratt, Stephen	M. C.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Public Lighting Commission	G.T.	$5.00	Note 1	$5.00	$5.00	$2.00	$5.00	.....	.....	.....
Public Lighting Commission	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Railway Steel Spring Co.	M.C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Rankin, Wm.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Rankin, Wm.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Reinforced Concrete Pipe Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Rennie Ice and Coal Co.	D. & W.	.....	.....	.....	.....	.....	.....	2.50	$5.00	7.50
Reynolds Motor Co.	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Restrick, C. W.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Rickel, H. W., & Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
River Rouge Lighting Station	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Riverside Scrap Iron & Metal Co.	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Riverside Storage & Cartage Co., Ltd.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Robertson, R., & Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Roe, Stephens Mfg. Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Rominski, Otto	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Russell Wheel & Foundry Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00

Schmidt, Carl E.	D. M.							2.25		2.25
Schneider Brick Co.	M. C.							5.00		5.00
Schultie Soap Co.	P. M.							5.00		5.00
Schumacher Bros.	M. C.							5.00		5.00
Schwanbeck Bros.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Schwarzchild & Sulzberger Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Scotten, Dillon Co.	P. M.							5.00		5.00
Scotten, Dillon & Co.	Wab.							5.00		5.00
Scripps Motor Co.	M. C.							5.00		5.00
Scully, W. J., Mfg. Co.	M. C.							5.00		5.00
Seamless Steel Tube Co.	Wab.							5.00		5.00
Shekell Bros.	M. C.							5.00		5.00
Sibley, F. M., Lumber Co.	M. C.							5.00		5.00
Sibley, F. M., Lumber Co.	D. T.							*		*
Sinclair, J. T.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Singer, J.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Skae, E. A.	M. C.							5.00		5.00
Slater Construction Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Smith Coal Dock	M. C.							5.00		5.00
Smith, H. H., Crapo	M. C.							5.00		5.00
Smith, John E.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Smith, Stanley B., & Co.	M. C.							5.00		5.00
Snyder, Geo. P.	M. C.							5.00		5.00
Solvay Process Co.	Del. Conn.							2.00	5.00	7.00
Speck, Hopp & Gresky	M. C.							5.00		5.00
Springwell Brick Co.	M. C.							5.00		5.00
Srere Bros.	M. C.							5.00		5.00
Srere Bros.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Standard Foundry Co.	D. M.							2.25		2.25
Standard Oil Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Star Corundum Wheel Co.	Wab.							5.00		5.00
Star Corundum Wheel Co.	P. M.							5.00		5.00
State Coal & Lumber Co.	M. C.							5.00		5.00
Stark & Neckel	P. M.							5.00		5.00
Stearns, F., & Co.	M. C.							5.00		5.00
Steffes, M., & Son	L.S.& M.S.							5.00		5.00
Stephens, Roe Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Stephens, Roe Mfg. Co.	M. C.							5.00		5.00
Sterling Coal Co.	M. C.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Stevens, F. B.	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Stewart Bros	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Stott, David	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Stott, David	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sullivan, Daniel	L.S.& M.S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sullivan Beef Co	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sun Oil Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Swedish Crucible Steel Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Swift & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Swift & Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Switzer, F. J.	D. T. & I.	.....	.....	.....	.....	.....	.....	5.00	$3.00	8.00
Talbot-Irwin Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Taylor Water Tube Boiler Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Ternes Coal & Lumber Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Theisen, Michael J.	L.S. & M.S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Thorpe, Chas. M.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Timkin-Detroit Axle Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Timkin-Detroit Axle Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Trowbridge, F. C.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Turner & Butler	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Union Depot Elevator	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Union Terminal Association	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Union Transfer & Storage Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Union Transfer & Storage Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Universal Motor Truck Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....

Yards	D. M.							2.25		2.25
Van Antwerp & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Van Dyke Motor Car Co.	Wab.							5.00		5.00
Van Dyke Motor Car Co.	M. C.							5.00		5.00
Vaughn, Wm. & Co.	M. C.							5.00		5.00
Victor Manufacturing Co.	M. C.							5.00		5.00
Vigers Coal & Wood Co.	M. C.							5.00		5.00
Vinton Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Voss, J. H., & Co.	M. C.							5.00		5.00
Wabash R. R., Team Tracks	Wab.							(Note 1-A		(Note 1-A
Wadell, J. P., Show Case & Cabinet Co.	M. C.							5.00		5.00
Wallace-Hugh Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Warren Motor Car Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Wayne Fuel & Feed Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Webb, R. S.	M. C.							5.00		5.00
Weber, J. F.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Welded Steel Barrel Co.	D. M.							2.25		2.25
Western Union Telegraph Co.	M. C.							5.00		5.00
Whitehead & Kales Iron Works	M. C.							5.00		5.00
Widman, C. D., & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Widman, J. C., & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Williams Bros. Co., The	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Wilson, C. R., Body Co.	M. C.							5.00		5.00
Wolf, F. H. Brick Co.	M. C.							5.00		5.00
Wolf & Dei	M. C.							5.00		5.00
Wolverine Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Woodmere Cemetery	Wab.							5.00		5.00
Worchester Salt Co., (Ecorse, Mich.)	M. C.							5.00		5.00
Yeomans Box Co.	D. M.							2.25		2.25
Yipe, M. J.	Wab.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

(The remainder of Exhibit "C." Tariff M. R. C. No. 236, I. C. C. No. 1428, consists of tables of switching tariffs similar to the above except that they apply to other shipping points in Michigan, the same as the above tables apply to Detroit. It is not deemed essential that tables of switching tariffs relating to other cities be printed in full, and such tables are therefore omitted under stipulation of counsel for the respective parties.)

Supplement No. 3 is in effect and contains all changes from the original tariff that are effective on the date hereof.

Supplement No. 3 to M. R. C. No. 236
Cancels Supplement No. 2

Supplement No. 3 to I. C. C. No. A-1428
Cancels Supplement No. 2

REISSUE—REDUCTION—ADVANCE

GRAND TRUNK RAILWAY SYSTEM

(Lines West of Detroit and St. Clair Rivers)

Supplement No. 3 To

TARIFF No. 502-A

Cancels Supplement No. 2

LOCAL FREIGHT TARIFF

Naming

SWITCHING RATES

And Rules Governing

ABSORPTION OF SWITCHING AND TERMINAL CHARGES

On Carload Traffic

—Also—

TRANSFER EXPENSE

On Less Carload Traffic

Between

DEPOTS OF THIS COMPANY

—And—

DEPOTS OF CONNECTING CARRIERS

—At—

POINTS IN MICHIGAN

As Specified in Tariff and Herein

Issued February 21, 1912

EFFECTIVE Intrastate March 5, 1912. Interstate March 25, 1912

(Except as noted in individual items.)

R. L. Burnap,
Assistant Freight Traffic Manager
G. T. Ry. System,
Chicago, Ill.

Chas. Clarke,
Division Freight Agent,
G. T. Ry. System,
Detroit, Mich.

Ira W. Gantt,
Assistant General Freight Agent, G. T. Ry. System,
Buffalo, N. Y.

E. F. Flinn,
Division Freight Agent,
G. T. Ry. System
Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicago, Ill.

Exhibit C.

TA-89

M. L. 86 To be posted in Tariff Binder "H," page 12

* * * * *

Note 10.—On traffic handled on an inter-switch movement to or from industries only having industrial sidings on the Grand Trunk Railway System originating at or destined to industries having industrial sidings located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.
(Notes 4 and 5)

				TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO					Maximum Amt. per Car absorbed under Rule 1		
							Connection with						
				Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G T. Ry.	G. T. Ry. Team Tracks	D. & T.S.L.R.R., D.T. & I. R. R, L.S. & M.S. Ry., M. C. R. R., P. M. R.R.Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Intrastate Nov. 20, 1911	Sup. No. 1 Reissue	Change	18	City of Detroit, Public Lighting Commission Power House	G.T.	$5.00	Note 1	$5.00	$5.00	$2.00	$5.00	.....	...	.....
		Change	19	Detroit City Electric Light Plant	G.T.	5.00	Note 1	5.00	5.00	2.00	5.00	.....	...	.....
		Add	21	Grand Trunk Railway System Fuel Yards (Milwaukee Jct.)	G.T.	.....	.....	5.00	5.00	5.00	5.00	.....	...	.....
Interstate Dec. 11, 1911		Cancel	22	Kraft, John, Coal Co.	G.T.	.....	.....	.....	.....	.....	.....	.....	...	.....
		Change	23	Lee and Cady	M. C.	.....	.....	.....	.....	.....	.....	$5.00	...	$5.00
		Cancel	24	Michigan State Agricultural Society	.....	.....	.....	.....	.....	.....	.....	.....	...	.....
		Cancel	25	Schillinger Bros.	.....	.....	.....	.....	.....	.....	.....	.....	...	.....

For explanation of notes and rules, see pages 3 and 4 of tariff. (R) Reduction.

EXHIBIT D.

ORDER OF MICHIGAN RAILROAD COMMISSION OF FEBRUARY 6TH. STATE OF MICHIGAN.

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission held at its offices in the City of Lansing on the 6th day of February, A. D. 1912.

Present, Hon. C. L. Glasgow, Chairman,
Hon. Lawton T. Hemans,
Hon. G. W. Dickinson,
Commissioners.

John S. Haggerty, Complainant,

vs.

The Grand Trunk Western Railway Company,
Defendant.

D—461

Complaint was filed in the above entitled matter on the 12th day of September, 1911, upon which complaint issued was joined and proofs taken. After duly considering the proofs submitted and arguments and briefs of counsel, this Commission finds that the allegations of said complaint are sustained; that the charge by the Grand Trunk Western Railway Company in and by its published tariffs whereby a different and a greater rate is charged and exacted for the movement of a carload shipment from a junction point with a connecting road to a team track on said Grand Trunk Western Railway than is charged and exacted for the movement of a like shipment from an industry to a team track upon the same line constitutes and is an undue and unjust discrimination.

Therefore, by virtue of the authority vested in us by law, it is hereby ordered that the Grand Trunk Western Railway Company do on or before thirty (30) days from this date issue, file and make effective a tariff removing such discrimination, and by such tariff publish and make effective like charges for the movement of a carload ship-

ment received from an industry within the City of Detroit, upon the said Grand Trunk Western Railway, consigned for delivery upon a team track or other siding of said road within the same city, and for a like shipment received by said Grand Trunk Western Railway from a connecting carrier at a junction point with the corporate limits of the City of Detroit, consigned to team track or other siding upon said road within the same city.

C. L. Glasgow, Chairman.
G. W. Dickinson, Commissioner.
Lawton T. Hemans, Commissioner.

COMPLAINANT'S EXHIBIT "E."

SUPPLEMENT No. 4 TO TARIFF No. 502-A

Supplement No. 3 and 4 are in effect and contain all changes from the original tariffs that are effective on the date hereof.

Supplement No. 4 to M. R. C. No. 236

Supplement No. 4 to I. C. C. No. A-1428

ADVANCE

GRAND TRUNK RAILWAY SYSTEM
(Lines West of Detroit and St. Clair Rivers)
Supplement No. 4 To
TARIFF No. 502-A
LOCAL FREIGHT TARIFF
Naming
SWITCHING RATES
And Rules Governing
ABSORPTION OF SWITCHING AND TERMINAL CHARGES
On Carload Traffic
—Also—
TRANSFER EXPENSE
On Less Carload Traffic
Between
DEPOTS OF THIS COMPANY
—And—
DEPOTS OF CONNECTING CARRIERS
—At—
POINTS IN MICHIGAN
As Specified in Tariff and Herein

Issued March 5, 1912

Exhibit E.

EFFECTIVE Intrastate March 16, 1912. Interstate April 8, 1912

(Except as noted in individual items.)

R. L. Burnap,
Assistant Freight Traffic Manager,
G. T. Ry. System,
Chicago, Ill.

Chas. Clarke,
Division Freight Agent,
G. T. Ry. System,
Detroit, Mich.

Ira W. Gantt,
Assistant General Freight Agent, G. T. Ry. System,
Buffalo, N. Y.

E. F. Flinn,
Division Freight Agent,
G. T. Ry. system,
Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicago, Ill.

TA-89
M. L. 86 To be posted in Tariff Binder "H," page 12

Date Effective	Tariff Reference	Add, Cancel, Change	Pages	
		Change	4	**Change Note 10** of Supplement No. 3 to read as follows: **Note 10.**—On traffic handled on an inter-switch movement to or from **industries only having industrial sidings** on the Grand Trunk Railway System originating at or destined to **industries having industrial sidings** located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car. This Note will **not** apply within the boundaries of the switching district of Detroit, Mich. For rates applicable at these points, see Supplement No. 4.
Intrastate Mar. 16, 1912 Interstate April 8, 1912	Sup. No. 4	Change	15	**Change page 15,** naming switching rates, as follows: **Switching Charges to or from Industries and Hold or Team Tracks on Grand Trunk Railway System and Junction Points with Connecting Carriers Within the Switching District of Detroit, Mich.** The following rates will be charged on carload traffic switched between industries and between team tracks within the boundaries of the switching district of Detroit, Mich.:

BETWEEN	AND	Rate in Dollars per Car
Industries having private sidings on G. T. Ry. System	Industries having private sidings on G. T. Ry. System	$5.00
Industries having private sidings on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	8.00
Hold or team tracks on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	(A)8.00
Junction points with connecting carriers within the boundaries of the switching district of Detroit, Mich.	Industries having private sidings on G. T. Ry. System within the boundaries of the switching district of Detroit, Mich.	(A)5.00
Junction points with connecting carriers within the boundaries of the	Hold or team tracks on the G. T. Ry. System within the boundaries of the	8.00

EXHIBIT F.

ORDER OF MICHIGAN RAILROAD COMMISSION OF MARCH 15TH. STATE OF MICHIGAN.

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission held at its offices on the 15th day of March, A. D. 1912.

In the matter of the application of John S. Haggerty, Complainant, vs. Grand Trunk Western Railway Company, Defendant, to have the effective date of Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236 postponed 45 days. } D-461

Complaint having been made by John S. Haggerty, of Detroit, Michigan, against Grand Trunk Western Railway Company, setting forth that the said Grand Trunk Western Railway Company has issued a certain tariff known as Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236, effective March 16th, 1912, which said supplement shows an advance in rates for team track delivery within the switching district of the City of Detroit, and said complainant alleging that the rates set forth in said Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236 are unreasonable and exorbitant, and if put in effect would mean a great hardship to said John S. Haggerty;

Now, therefore, by virtue of the authority vested in us by law, it is ordered that the date on which said rate mentioned and set forth in said Supplement No. 4 to M. R. C. Tariff No. 236, to become effective March 16, 1912, is hereby postponed until April 29, 1912, in order that this Commission may have an opportunity to investigate the reasonableness of such proposed rate and the matter set forth in said complaint.

C. L. Glasgow,
Chairman.

COMPLAINANT'S EXHIBIT "G."

SUPPLEMENT No. 5 TO TARIFF No. 502-A

Supplements Nos. 3, 4 and 5 to M. R. C. No. 236 are in effect and contain all changes from the original tariff that are effective on the date hereof

Supplement No. 5 to M. R. C. No. 236

GRAND TRUNK RAILWAY SYSTEM
(Lines West of Detroit and St. Clair Rivers)
Supplement No. 5 To
TARIFF No. 502-A
LOCAL FREIGHT TARIFF
Naming
SWITCHING RATES
And Rules Governing
ABSORPTION OF SWITCHING AND TERMINAL CHARGES
On Carload Traffic
—Also—
TRANSFER EXPENSE
On Less Carload Traffic
Between
DEPOTS OF THIS COMPANY
—And—
DEPOTS OF CONNECTING CARRIERS
—At—
POINTS IN MICHIGAN
As Specified in Tariff and Herein

The effective date of Intrastate rates named in Supplement No. 4 to M. R. C. No. 236, Tariff No. 502-A, is postponed until April 29, 1912. Pending reissue, restoration or cancellation of the Intrastate rates named in Supplement No. 4 to M. R. C. No. 236, Tariff No. 502-A the rates named in M. R. C. No. 236, Tariff No. 502-A and Supplement No. 3, will apply.

Issued under authority of Michigan Railroad Commission of March 15, 1912. File D-461.

ISSUED MARCH 26, 1912

R. L. Burnap,
Assistant Freight Traffic Manager,
G. T. Ry. System,
Chicago, Ill.

Chas. Clarke,
Division Freight Agent,
G. T. Ry. System,
Detroit, Mich.

Exhibit G.

Ira W. Gantt,
Assistant General Freight Agent, G. T. Ry. System, Buffalo, N. Y.

E. F. Flinn,
Division Freight Agent, G. T. Ry. System, Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicago, Ill.

TA-89
M. L. 86 To be posted in Tariff Binder "H," page 12

COMPLAINANT'S EXHIBIT "H."

SUPPLEMENT No. 6 TARIFF No. 502-A

Supplements No. 3 and 5 to I. C. C. No. A-1428 are in effect and contain all changes from the original tariff that are effective on the date hereof

Supplements No. 3 and 6 to M. R. C. No. 236 are in effect and contain all changes from the original tariff that are effective on the date hereof

Supplement No. 6 to M. R. C. No. 236 Cancels Supplement No. 4 and 5.

Supplement No. 5 to I. C. C. No. A-1428 Cancels Supplement No. 4

GRAND TRUNK RAILWAY SYSTEM

(Lines West of Detroit and St. Clair Rivers)

Supplement No. 6 to

TARIFF No. 502-A

Cancels Supplements No. 4 and 5

LOCAL FREIGHT TARIFF

Naming

SWITCHING RATES

And Rules Governing

ABSORPTION OF SWITCHING AND TERMINAL CHARGES

On Carload Traffic

—Also—

TRANSFER EXPENSE

On Less Carload Traffic

Between

DEPOTS OF THIS COMPANY

—And—

DEPOTS OF CONNECTING CARRIERS

—At—

POINTS IN MICHIGAN

As Specified in Tariff and Herein

Issued March 30, 1912

EFFECTIVE. Intrastate April 11, 1912. Interstate May 8, 1912.

(Except as noted in individual items.)

R. L. Burnap, Assistant Freight Traffic Manager.

Chas. Clarke, Division Freight Agent.

Exhibit H.

G. T. Ry. System,
Chicago, Ill.
Ira W. Gantt,
Assistant General Freight
Agent, G. T. Ry. System,
Buffalo, N. Y.

G. T. Ry. System,
Detroit, Mich.
E. F. Flinn,
Division Freight Agent,
G. T. Ry. System,
Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicago, Ill.

TA-89
M. L. 86 To be posted in Tariff Binder "H," page 12

Date Effective	Tariff Reference	Add, Cancel, Change	Pages	
		Change	3	**Note 1** will not apply at Detroit, Milwaukee Jct., or West Detroit, Mich. This has the effect of canceling rates between and to and from team tracks of this System at these points, except as otherwise provided in this Supplement.
		Change	4	**Change Note 10** of Supplement No. 3 to read as follows: **Note 10.**—On traffic handled on an inter-switch movement to or from **industries only having industrial sidings** on the Grand Trunk Railway System originating at or destined to **industries having industrial sidings** located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car. This Note will **not** apply within the boundaries of the switching district of Detroit, Mich. For rates applicable at these points, see Supplement No. 6.
				DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH. **(Notes 4 and 5 of tariff)**
		Cancel	15	Cancel rates on **Sand** and **Gravel** from the Detroit River to Grand Trunk Railway industrial sidings and team tracks, leaving no rates in effect.
Intrastate April 11, 1912	Sup. No. 6	Cancel	15	**Cancel** rates provided for on page 15 of tariff under the following caption: **"Switching to or from Industries on Grand Trunk System Tracks."**
				Except as otherwise specifically provided for herein, the following rates will be charged on carload traffic switched between points within the boundaries of the switching district of Detroit, Mich.

Interstate	Sup. No. 5			BETWEEN	AND	Rate in Dollars per Car
May 8, 1912		Change	15	Industries having private sidings on G. T. Ry. System	Industries having private sidings on G. T. Ry. System	$5.00
				Industries having private sidings on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	(1)
				Hold or team tracks on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	(1)
				Junction points with connecting carriers within the boundaries of the switching district of Detroit, Mich.	Industries having private sidings on G. T. Ry. System within the boundaries of the switching district of Detroit, Mich.	5.00

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.

(Notes 4 and 5 of Tariff.)

Intrastate April 11, 1912	Sup. No. 6	Interstate	Sup. No. 5			TO OR FROM Industrial Sidings and other Tracks named below	Railroad Location	Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO: Industrial Sidings on G. T. Ry.	G. T. Ry. Team Tracks	Connection with: D. & T. S. L. R. R., D. T. & I. R. R., L. S. & M. S. Ry., M. C. R. R., P. M. R. R., Wab. R. R. at West Detroit, Mich., or M. C. R. R. at Milw. Jct., Mich.	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich.	L. S. & M. S. Ry. at Brush St. Yard, Mich.	Detroit Manufacturers R. R. Detroit Terminal R. R.	Maximum Amt. per Car absorbed under Rule 1: Terminal Roads Charge	Intermediate Roads Charge	Total Charge
May 8, 1912				Cancel	16 to 26	Eliminate reference to	Note 1	shown	on page	s 16 to 26, in	clusive,	of tariff.				
				Change	18	City of Detroit, Public Lighting Commission Power House	G. T.	$5.00	.....	$5.00	$5.00	$2.00	$5.00	.....	...	.....
				Change	19	Detroit City Electric Light Plant	G. T.	5.00	.....	5.00	5.00	2.00	5.00	.....	...	.....
				Change	19	Detroit Railroad Elevator Company	G. T.	5.00	.....	5.00	5.00	1.00	5.00	.....	..	.....
				Change	25	Public Lighting Commission	G. T.	5.00	.....	5.00	5.00	2.00	5.00	.....	...	.....

(1) Rates provided in Supplements superseded by this issue are hereby canceled, leaving no rates in effect.

(2) Applies only on traffic originating at or destined to points beyond the boundaries of the switching district of Detroit, Mich., upon which the Detroit & Toledo Shore Line R. R. receives a revenue or road haul to or from West Detroit, Mich.

AFFIDAVIT OF C. S. CUNNINGHAM IN SUPPORT OF BILL.

(Filed April 12, 1912.)

UNITED STATES OF AMERICA, STATE AND EASTERN DISTRICT OF MICHIGAN, COUNTY OF WAYNE, ss.

Charles S. Cunningham, being duly sworn, deposes and says that he is Superintendent of the lines of railroad and the business of the Grand Trunk Railway Company of Canada in Michigan and has been such Superintendent for about one year last past and has been engaged in the Railroad business upwards of twenty-five (25) years and is familiar with the business of said Company and the railroad business generally in the City of Detroit.

Deponent has been familiar with the operation and effect of the statute of this State pertaining to the delvery of cars from one railroad to another for merely switching purposes so far as such statute has had effect and states that he fears and has good grounds to fear that the Michigan Railroad Commission intends to make another order, as it has already made an order requiring said railroad Company to receive for delivery upon its team tracks in Detroit cars delivered to it for such purposes from other railroad companies in said city and from shippers upon private sidings therein.

Said railroad Company above named has team tracks in Detroit on which freight coming into the city from the lines of said Company is deposited for unloading in cars. These team tracks are no greater in capacity than are absolutely required for the business above named and are daily crowded to their capacity and have been constantly so crowded. Deponent knows and states that the use of said team tracks of said Company for car load business if received from other railroads in said City, will inevitably congest their business thereon so as to interfere with the loading and unloading and the handling of cars thereon, including the traffic of the State of Michigan and also interstate traffic; that said Company is in the daily conduct of freight business on said team tracks both intrastate and interstate. If said Company shall be required to receive said switching business on its said team tracks it will necessarily follow and when such cars were received it did follow as a result that interstate business of said Company was and will be

greatly obstructed and delayed. In fact some of the interstate business must necessarily be crowded out. If said Company shall be required to handle such business it will be impossible for said Company to perform such additional services without buying additional land and building additional tracks for that purpose. It will not be possible to conduct such business upon the team tracks at their present capacity. Deponent states that there is no vacant land adjacent or convenient to said Company's tracks which can be acquired and used for team track purposes; and further it would be necessary to purchase and demolish buildings in order to lay such additional tracks and this could only be done at a cost of many hundreds of thousands of dollars.

That said Company is daily engaged in handling of passengers and United States Mails and that said mails are delayed by the congestion of said team track terminals of said Company in Detroit and must necessarily be delayed so long as said Company is required to receive upon its team tracks cars switched to it in Detroit from other railroads and private sidings on other railroads in obedience to the requirements of said statute and orders issued thereunder.

That if said Company shall be required to give notice of application for injunction before it shall be allowed to cease and discontinue said service it will of necessity be required to lose much traffic which belongs to its own line each day, by reason of the crowding out of such traffic from said team tracks; and that such loss of traffic is a loss of revenue each day, the amount of which cannot be ascertained or stated, but which is very large. Said loss of revenue is irrecoverable and irreparable.

Charles S. Cunningham.

Subscribed and sworn to before me this 11th day of April, 1912.

William MacBean,
Notary Public, Wayne County, Michigan.

My Commission expires Dec. 20th, 1914.

(Notarial Seal.)

THE ANSWER OF THE MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON AND FRANZ C. KUHN, THE ABOVE NAMED DEFENDANTS, TO THE AMENDED BILL OF COMPLAINT OF THE GRAND TRUNK RAILWAY COMPANY OF CANADA, COMPLAINANT.

(Filed May 28th, 1912.)

UNITED STATES OF AMERICA, THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

No. 5471.

Grand Trunk Railway Company of Canada, a Corporation,

Complainant,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn,

Defendants.

The defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say:

I.

Answering the first paragraph of said bill, the defendants admit that the Michigan Railroad Commission is a body composed of three Commissioners appointed by the Governor and confirmed by the Senate of the State of Michigan, under the laws of said State, known collectively as "Michigan Railroad Commission," with power to sue and be sued in such name, all under the laws of said State, having its office at Lansing, in the Eastern District of Michigan. The defendants admit that Cassius L. Glasgow resides in Nashville, Barry County, in the Western District of Michigan; that Lawton T. Hemans resides in Mason, Ingham County, in the Eastern District of Michigan; that George W. Dickinson resides in Pontiac, Oakland

County, in the Eastern District of Michigan, and that Franz C. Kuhn resides in Mt. Clemens, Macomb County, in the Eastern District of Michigan.

As to the other matters contained in said first paragraph of said bill, these defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

II.

The defendants admit the allegations contained in the second paragraph of said bill.

III.

As to the matters contained in the third paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

IV.

As to the matters contained in the fourth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

V.

As to the matters contained in the fifth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

VI.

As to the matters contained in the sixth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

VII.

As to the matters contained in the seventh paragraph of said bill, the defendants have no knowledge or information

sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

VIII.

As to the matters contained in the eighth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

IX.

The defendants admit that the Legislature of the State of Michigan at a session in the year 1911 passed an act known as Act No. 139 of the Public Acts of 1909; and that Section 7 of said act in sub-sections "a," "c" and "d," provides, among other things as stated in said 9th paragraph of said bill.

The defendants deny the other allegations contained in said 9th paragraph of said bill.

X.

Answering the tenth paragraph of said bill, the defendants admit the matters therein alleged, relative to the issuance, publication and filing of the tariffs therein mentioned, but deny that the charges therein fixed were fair, just and reasonable, and deny that the difference between said charges was not unduly or unjustly discriminatory, or in violation of any acts of the State of Michigan, then or now in force, and then or now constitutional, valid and binding upon complainant.

XI.

Answering the 11th paragraph of said bill, defendants admit that on or about the 12th day of September, 1911, one John S. Haggerty filed his bill of complaint against the Grand Trunk Western Railroad Company, said complaint being known on the docket as D-461; that said complaint alleged among other things that the rates for switching service published in the tariffs referred to in paragraph 10 of said bill were unreasonable and resulted in discrimination against the user of the team tracks of said Grand Trunk Western Company to the extent of $3.00 per car; that an answer denying said averments was filed by the Western Company in the name under which it was im-

pleaded; that a hearing was had on said complaint and answer before said Commission, and that on the 6th day of February, A. D. 1912, said Commission issued a certain order, a copy of which order is attached to said bill of complaint, marked Exhibit "D," and that in said order of said Commission said Western Company was directed to file and make effective a tariff removing said discrimination, as stated in said 11th paragraph of said bill of complaint

The defendants deny that no competent evidence showing or tending to show any such rates to be unreasonable, and no evidence showing, or tending to show, any of such rates to be unjustly or unduly discriminatory was introduced or offered on the part of any party to such proceedings before said Commission. The defendants expressly aver that a full hearing was had before said Commission, and that the order of said Commission was made after giving ample opportunity for hearing and after considering all of the evidence offered.

XII.

Answering the 12th paragraph of said bill, the defendants say that they are informed and believe that said Grand Trunk Western Railway Company has no tracks within or near the City of Detroit, and that said complaint of John S. Haggerty and said order of the Commission of February 6th, 1912, were erroneously directed against said Grand Trunk Western Company.

Further answering the said 12th paragraph of said bill, the defendant, the Michigan Railroad Commission, says that it has cancelled said order of February 6th, 1912, by an order of the Commission dated the 14th of May, 1912, a copy of which order is hereto attached marked Exhibit "A" and made a part of this answer with the same force and effect as if herein inserted.

Further answering said 12th paragraph of said bill these defendants deny that any acts passed by the State of Michigan compelling complainant to open its team tracks to other carriers, or to haul the cars of other carriers, within the City of Detroit, are unconstitutional; and deny that to so use or force complainant to use its property in the hauling of such cars of other companies over its tracks will constitute the taking of its property without due process of law, and in contravention of the 14th Amendment to the Constitution of the United States.

The defendants expressly aver that if said complainant is entitled to do business in the State of Michigan at all, it is required to do such business under the laws of such state which require the interchange of traffic complained of; and that complainant by doing business in the State of Michigan has agreed to comply with the requirements of the laws of the State relative to interchange of traffic.

Further answering said 12th paragraph of said bill these defendants say that as to the other matters therein alleged they have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

XIII.

Answering the 13th paragraph of said bill, the defendants admit the matters therein alleged, relative to the issuance, publication and filing of the tariffs therein mentioned, but as to the reasons for issuing said tariffs as therein alleged, the defendants have no knowledge or information sufficient to constitute a belief and therefore neither admit nor deny the same but leave complainant to its proof thereof.

XIV.

Answering the 14th paragraph of said bill, these defendants admit that on the 14th day of March, A. D. 1912, said John S. Haggerty filed a supplemental petition with the said Michigan Railroad Commission complaining of a tariff of the Grand Trunk System, known as "Supplement No. 4 to M. R. C. No. 236, issued March 5th, 1912, effective intrastate March 16th, 1912, and interstate April 8th, 1912," and alleging that the rates set forth in said tariff were unreasonable and exorbitant, and if put into effect would mean a great hardship to said Haggerty; that thereupon the said Michigan Railroad Commission made an order dated March 15th, 1912, a copy of which order is attached to said bill of complaint and marked Exhibit "F," and that by said order said Commission attempted to suspend the operation of said tariff to and until the 29th day of April, 1912.

Further answering said 14th paragraph of said bill, the defendant, the Michigan Railroad Commission, says that said order of March 15th, 1912, was erroneously directed to the

Grand Trunk Western Railway Company, and that said order has been cancelled by an order of the said Michigan Railroad Commission dated the 14th of May, A. D. 1912, a copy of said order being hereto attached and marked Exhibit "A" as hereinbefore stated in paragraph twelve of this answer.

Further answering said 14th paragraph of said bill, these defendants deny that said Michigan Railroad Commission is without authority to regulate or make any order with reference to the tracks claimed to be owned by complainant in the City of Detroit, and deny that any laws passed by the State of Michigan authorizing said Commission to exercise any authority over said tracks are null and void and of no effect because of in contravention of the 14th Amendment to the Constitution of the United States.

Further answering said 14th paragraph of said bill, these defendants say as to the other matters therein contained they have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same, but leave complainant to its proof thereof.

XV.

The defendants admit the allegations contained in the 15th paragraph of said bill.

XVI.

Answering the 16th paragraph of said bill, the defendants admit that the tariff therein mentioned, entitled "Supplement No. 6 to M. R. C. No. 236" was issued as therein stated, and that under the terms of said tariff the team tracks of complainant were withdrawn from intra-city and intra-state switching movements with certain exceptions as alleged in said 12th paragraph of said bill.

The defendants deny all the other allegations contained in said 16th paragraph of said bill.

XVII.

Answering the 17th paragraph of said bill, the defendant, the Michigan Railroad Commission admits that it did, on the 10th day of April, A. D. 1912, suspend said last named tariff mentioned in paragraph 16 of said bill and entitled, "Supplement No. 6 to M. R. C. No. 236," by an order made on said

date, a copy of said order being attached hereto, marked Exhibit "B," and made a part thereof with the same force and effect as if herein inserted.

Further answering said 17th paragraph, the defendant, the Michigan Railroad Commission admits that it intends to compel the said complainant to comply with the laws of the State of Michigan, insofar as the same require interchange of traffic in the City of Detroit and over the lines of railroads located in said city and claimed to be owned and operated by complainant.

XVIII.

Answering the 18th paragraph of said bill, the defendant, the Michigan Railroad Commission, admits that it intends to require complainant to continue such local switching and business as is required by the laws of the State of Michigan; and that it will require complainant to allow the use of its terminals to receive from, transfer for, or deliver cars to other carriers having terminals of their own within the corporate limits of Detroit, at junction points with such other carriers in local movements in said city, to or from complainant's hold or team tracks within said city insofar as the same are required by the laws of the State of Michigan.

Further answering the 18th paragraph of said bill the defendants deny all the other allegations contained therein.

XIX.

The defendants deny the allegations contained in the 19th paragraph of said bill.

XIX-a.

The defendants deny the allegations contained in the 20th paragraph of said bill.

XX.

Answering the 20th paragraph of said bill, the defendants deny that to require complainant to allow the use of its terminal facilities, so-called, on any other conditions than those demanded by complainant or to require complainant to allow the use of its team tracks to industries on its line within the corporate limits of said city to other carriers or to require complainant to receive, handle or deliver cars within said city from

such other carriers, or to receive such cars and deliver same to its hold or team tracks, constitutes a taking of complainant's property without due and just compensation and without due process of law in contravention of the 14th Amendment to the Constitution of the United States.

Further answering said 20th paragraph of said bill of complaint, the defendants say as to the matters therein alleged as to the real and beneficial ownership of said complainant in said railroad properties in the City of Detroit, the defendants have no knowledge or information sufficient to constitute a belief and therefore neither admit nor deny the same, but leave complainant to its proof thereof.

XXI.

Answering the 21st paragraph of said bill, the defendants admit that if said complainant shall refuse obedience to said order of said Commission dated April 10th, 1912 (Exhibit B), and if complainant refuses to comply with the laws of the State of Michigan requiring it to make interchange of local traffic, said Michigan Railroad Commission and said Franz C. Kuhn as Attorney General of the State of Michigan on behalf of said Commission and on behalf of the State of Michigan will institute proceedings under the statutes of the State of Michigan against complainant to enforce said order of suspension and said laws of the State of Michigan.

Further answering said 21st paragraph of said bill, the defendants state that they will not attempt to enforce against the complainant or any property owned and controlled by it the orders of said Commission dated February 6th, 1912, and March 15th, 1912, and directed to the Grand Trunk Western Railway Company, but expressly aver that said orders have been cancelled by an order of the Commission as hereinbefore stated.

Further answering said 21st paragraph of said bill, the defendants deny all the other allegations therein contained.

XXII.

Further answering the said bill of complaint, the defendants Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn say that they have no personal interest in the subject matter of said bill, except as officers of and representing the State of Michigan.

The defendants deny that complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and ask to be dismissed with their costs in this behalf sustained.

Michigan Railroad Commission
By C. L. Glasgow,
Chairman.

Cassius L. Glasgow
George W. Dickinson
Lawton T. Hemans
Franz C Kuhn

Franz C. Kuhn
George S. Law
Edward Waer
Solicitors for Defendants,
Michigan Railroad Commission,
Cassius L. Glasgow,
Lawton T. Hemans,
George W. Dickinson.

George S. Law
Edward Waer
Solicitors for Defendant, Franz C. Kuhn.

State of Michigan, County of Ingham, ss.

Cassius L. Glasgow, being duly sworn, deposes and says that he is one of the defendants in the above entitled case, that he is a member of the Michigan Railroad Commission, that he has read the foregoing answer by him subscribed and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to these matters he believes it to be true.

Cassius L. Glasgow.

Subscribed and sworn to before me this 22nd day of May, A. D. 1912.

Willard N. Sweeney,
Notary Public Bay County, Michigan.
Acting in Ingham Co.

My commission expires 12-20-1915.

DEFENDANTS' EXHIBIT "A."

State of Michigan, Office of the Michigan Railroad Commission, ss.

I, Willard N. Sweeney, Secretary of the Michigan Railroad Commission, Do Hereby Certify, That I have compared

the annexed copy of Order in the matter of John S. Haggerty vs. Grand Trunk Western Railway Company, with the original Order, D-461 recorded in Journal 4 and that it is a true and correct transcript therefrom, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Commission, at Lansing, this 14th day of May in the year of our Lord one thousand nine hundred and twelve.

(Seal) Willard N. Sweeney,
Secretary Michigan Railroad Commission.

STATE OF MICHIGAN.
BEFORE THE MICHIGAN RAILROAD COMMISSION.

At a session of the Michigan Railroad Commission held at its offices in the City of Lansing on the 14th day of May, A. D. 1912.

Present: Hon. C. L. Glasgow, Chairman, Hon. Lawton T. Hemans, Commissioner.

D-461.

John S. Haggerty,
Complainant.

vs.

Grand Trunk Western Railway Company,
Defendant.

Whereas, it has come to the knowledge of the Michigan Railroad Commission that its orders dated February 6, 1912, and March 15, 1912, in the above entitled cause, were erroneously directed against said Grand Trunk Western Railway Company, because said Grand Trunk Western Railway Company does not own or operate any tracks in or near the City of Detroit;

It Is Hereby Ordered, That the said orders dated February 6, 1912, and March 15, 1912, be and the same are hereby cancelled.

C. L. Glasgow,
Chairman.
Lawton T. Hemans,
Commissioner.

DEFENDANTS' EXHIBIT "B."

State of Michigan, Office of the Michigan Railroad Commission, ss.

I, Willard N. Sweeney, Secretary of the Michigan Railroad Commission, Do Hereby Certify, That I have compared the annexed copy of Order in the matter of postponement of Supplement No. 6 to Grand Trunk M. R. C. tariff No. 236, effective April 11th,-1912 applying on team track switching in the City of Detroit for a period of forty-five days with the original Order recorded in Journal 3 and that it is a true and correct transcript therefrom, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Commission, at Lansing, this fourteenth day of May in the year of our Lord one thousand nine hundred and twelve.

(Seal) Willard N. Sweeney
Secretary Michigan Railroad Commission.

STATE OF MICHIGAN.
BEFORE THE MICHIGAN RAILROAD COMMISSION.

Session of the Michigan Railroad Commission held at its offices in the City of Lansing on the 10th day of April, A. D. 1912.

D-461.

In the matter of the postponement of Supplement No. 6 to Grand Trunk M. R. C. Tariff 236 effective April 11, 1912, applying on Team Track Switching in the City of Detroit, for a period of 45 days.

It having come to the knowledge of the Michigan Railroad Commission that the Grand Trunk Railway Company, has published a tariff known as Supplement No. 6 to M. R. C. 236, effective April 11, 1912, the same applying on team track switching within the City of Detroit, said supplement cancelling team track switching on the Grand Trunk Railway in said City of Detroit, leaving no rates in effect, and the Commission on its own initiative being desirous of investigating the reasonableness of the application of that part of said Supplement as affects the team track switching, hereinbefore mentioned;

Therefore, by virtue of the authority vested in us by law, as shown in Section 10 of Act 139 of the Public Acts of 1911,

It is Hereby Ordered, that said Supplement No. 6 to Grand Trunk M. R. C. Tariff No. 236 to become effective April 11, 1912, be and the same is hereby postponed until May 25, 1912 in order that this Commission may have an opportunity to investigate the reasonableness of such Supplement as hereinbefore set forth.

C. L. Glasgow, Chairman.
G. W. Dickinson, Commissioner.
Lawton T. Hemans, Commissioner.

AFFIDAVIT OF CASSIUS L. GLASGOW ON BEHALF OF DEFENDANTS.

(Filed June 1st, 1912.)

UNITED STATES OF AMERICA.
THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

Grand Trunk Railway Company of Canada, a Corporation,
Complainant,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn,
Defendants.

State of Michigan, County of Ingham, ss.

Cassius L. Glasgow, being duly sworn, deposes and says:

That he is Chairman and a member of the Michigan Railroad Commission, and is familiar with freight transportation and the transportation problems in the City of Detroit; that on or about the 20th and 21st days of May, 1912, he investigated freight conditions in said city to ascertain the cause of present congestion of freight traffic; that he has talked with numerous business men and manufacturers directly interested in freight transportation in the City of Detroit; and that he has by other

means familiarized himself with freight transportation and freight problems, and has investigated the causes of present freight congestion of said city.

That he is familiar with and has knowledge of the conditions existing on the tracks of carriers in the City of Detroit during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic, and the transportation of cars from junction points in said city to the destinations to which they are consigned, as carried on within the last year pursuant to the requirements of subdivision d of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; and that such interchange of traffic did not in any way tend to congest or impede traffic on the tracks of said railroads in the City of Detroit, including the lines of the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company, and in no way affected interstate and intrastate business except to facilitate the same and to relieve congestion thereof on the tracks of the various railroads in the City of Detroit.

Deponent further says that a compliance upon the part of the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company with the requirements of subdivision d of section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will not overtax the capacity of the tracks of said companies in the City of Detroit, and will not cause congestion of traffic on said tracks and will not interfere with interstate traffic but will facilitate such traffic, and that compliance on the part of said Grand Trunk Railway Company of Canada and said Detroit, Grand Haven and Milwaukee Railroad Company with the requirements of said statute will not cause any interference with the handling of passengers or the United States mails by said companies; and that such passenger traffic and such mail carriage will in no way be interfered with or delayed.

Deponent further says that during the past year, while railroad companies operating in the City of Detroit including the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company were complying with the requirements of said subdivision d of section 7 of Act No. 139 of the Public Acts of 1911, and were interchanging carload traffic as therein required, no complaints were received by the Michigan Railroad Commission from any carrier in said city relative to congestion of traffic caused by such interchange of traffic, and no complaints were received by

said Commission from any source that such interchange of traffic was causing congestion of freight traffic or interference with or delay in passenger traffic or with the United States mails; and that no application was made to said Commission by any of said carriers asking for relief under the railroad act of the State of Michigan from congestion of traffic caused by such interchange.

Cassius L. Glasgow.

Subscribed and sworn to before me this 31st day of May, A. D. 1912.

Willard N. Sweeney,
(Seal) Notary Public Bay County, Michigan,
Acting in Ingham Co.

My commission expires Dec. 20, 1915.

AFFIDAVIT OF GEORGE W. GULLIFORD IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5471.

Grand Trunk Railway Company of Canada

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

George W. Gulliford being duly sworn, deposes and says, that he is Chief Clerk at Milwaukee Junction, Detroit, of the Grand Trunk Railway Company of Canada, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city

to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan, for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) George W. Gulliford.

Subscribed and sworn to before me this 17th day of June, A. D. 1912.

(Seal) (Signed) D. R. Hammond,
Notary Public in and for Wayne County, Michigan.

My commission expires July 6th, 1915.

AFFIDAVIT OF LAWRENCE H. NOLAN IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5471.

Grand Trunk Railway Company of Canada

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

Lawrence H. Nolan being duly sworn, deposes and says, that he is Superintendent of Detroit Terminals of the Grand Trunk Railway Company of Canada, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit; during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan, for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity

of the tracks of complainant in the City of Detroit, and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both intrastate and interstate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is no sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousand of dollars. Further deponent sayeth not.

(Signed) Lawrence H. Nolan.

Subscribed and sworn to before me this 12th day of June, 1912.

(Signed) William MacBean,
(Seal) Notary Public in and for Wayne County, Michigan.

My commission expires 20th Dec., 1914.

AFFIDAVIT OF GORDON O'DAY IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5471.

Grand Trunk Railway Company of Canada

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

Gordon O'Day being duly sworn, deposes and says, that he is Car Distributer at Detroit of the Grand Trunk Railway Company of Canada, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junctions points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will cause

congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) G. O'Day.

Subscribed and sworn to before me this 14th day of June, A. D. 1912.

(Signed) William Mac Bean,
Notary Public in and for Wayne County, Michigan.

(Seal)

My commission expires 20th Dec., 1914.

AFFIDAVIT OF HENRY BRAMLEY IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5471.

Grand Trunk Railway Company of Canada

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

Henry Bramley being duly sworn, deposes and says, that he is Chief Clerk at West Detroit Station of the Grand Trunk Railway Company of Canada, complainant in the above named suit; and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit, during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan, for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will

cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both intrastate and interstate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) Henry Bramley.

Subscribed and sworn to before me this 11th day of June, 1912.

(Signed) Joseph W. Lougheed,

(Seal) Notary Public in and for Wayne County, Michigan.

My commission expires 3-4-14.

AFFIDAVIT OF JOHN C. McFADZEAN IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5471.

Grand Trunk Railway Company of Canada

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

John C. McFadzean being duly sworn, deposes and says, that he is agent at Detroit of the Grand Trunk Railway Company of Canada, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit, during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will

cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) John C. McFadzean.

Subscribed and sworn to before me this 12th day of June, A. D. 1912.

(Seal) (Signed) William MacBean,
Notary Public in and for Wayne County, Michigan.
My commission expires 20th Dec., 1914.

BILL OF COMPLAINT OF DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY CO. AS AMENDED.

(Filed July 30, 1912.)

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Detroit, Grand Haven & Milwaukee Railway Company, a Corporation,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn.

To the Honorable Judge of the District Court of the United States, for the Eastern District of Michigan, in Chancery Sitting:

Humbly complaining, your orator, Detroit, Grand Haven & Milwaukee Railway Company, brings this, its bill of complaint against the Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, and thereupon orator avers:

I.

Orator is a railroad corporation organized and existing under and by virtue of the laws of the State of Michigan. The Michigan Railroad Commission (hereinafter for brevity called the Commission), is a body composed of three members, Commissioners appointed by the Governor and confirmed by the Senate of the State of Michigan under the laws thereof, known collectively as the "Michigan Railroad Commission," with power to sue and be sued in such name, all under the laws of said state, having its office at Lansing, in the Eastern District of Michigan. Cassius L. Glasgow resides in Nashville, Barry County, in the Western District of Michigan; Lawton T. Hemans resides in Mason, Ingham County, in the Eastern District of Michigan; George W. Dickinson resides in Pontiac, Oakland County, in the Eastern District of Michigan; and Franz C. Kuhn resides in Mount Clemens, Macomb County, in the Eastern District of Michigan.

II.

The defendants, Cassius L. Glasgow, Lawton T. Hemans and George W. Dickinson, are and have been since the 12th day of September, 1911, the members of and constitute, and have constituted since said date, said Michigan Railroad Commission, duly appointed by the Governor of the State of Michigan, and confirmed by the Senate of such state, and duly qualified, all under and by virtue of an Act of the Legislature of such state, duly passed and approved June 2, 1909, and in force on the first day of September, 1909, and thence hitherto, entitled: "An Act to define and regulate common carriers and the receiving, transportation and delivery of persons and property, to prevent the imposition of unreasonable rates, to prevent unjust discrimination, insure adequate service, create the Michigan Railroad Commission, define the powers and duties thereof, and to prescribe penalties for violations hereof." Defendant, Franz C. Kuhn, is Attorney General of the State of Michigan, duly elected, qualified and acting as such under the statutes of said state, and empowered, authorized and required under said Act of June 2, 1909, hereinabove more fully described, to institute and prosecute all necessary actions or proceedings for the enforcement of said act, and of all other laws of the State of Michigan, relating to common carriers, and for punishment of all violations thereof, and to act as counsel in any proceeding, investigation, hearing or trial prosecuted or defended by said Commission.

III.

This is a suit arising under the Constitution of the United States for that your orator seeks to enjoin the defendants herein, and each one thereof, from attempting in any manner to enforce the provisions of two certain acts of the Legislature of the State of Michigan and two certain orders of the Michigan Railroad Commission, hereinafter specifically described, or either thereof, or, from instituting any action or proceeding against orator, its officers, directors, agents or employes on account of any violation thereof, or either thereof, for the reason that the said acts and orders, and each of them, are violative of the Constitution of the United States.

The amount in dispute in this suit exceeds, exclusive of interests and costs, the sum of three thousand dollars ($3000).

IV.

Orator is a railroad corporation, and a common carrier of goods and passengers, engaged in both state and interstate commerce; it owns, maintains and operates a line of railroad extending from the City of Detroit to the City of Grand Haven, both in the State of Michigan, and owns, maintains and operates a car ferry from its terminals in said City of Grand Haven to the City of Milwaukee in the State of Wisconsin. Orator also possesses and uses, in connection with its main track and main line at different points, switch yards, side tracks and team tracks, which are for the exclusive use of orator for the accommodation of its business, and for the accommodation of its own customers and shippers. Orator also uses, owns and possesses switch yards, side tracks and team tracks within the corporate limits of the City of Detroit, in said state, in the district known as the switching district of the City of Detroit, which said switch yards, side tracks and team tracks are used in conjunction and connection with its main line or lines and the tracks thereof, and are for the exclusive use of orator in the conduct of its business; said team tracks are facilities connected with the main track or line of orator for use in the transportation and interchange of business carried over its main line for its own shippers and customers. A large part of the business of orator is interstate commerce; said interstate commerce is carried on not only between the State of Michigan and the State of Wisconsin, but also by means of other railroad lines connecting with orator, a large part of said business is carried on between a large number of other states of the United State, and the State of Michigan, or between said states and the Dominion of Canada.

V.

The Grand Trunk Western Railway Company (hereinafter for brevity called the "Western Company"), is a corporation organized and existing under and by virtue of the laws of the states of Michigan and Indiana. Its main line or lines run from the City of Port Huron in the State of Michigan to the City of Chicago, in the State of Illinois, in a general southwesterly direction, through the States of Michigan, Indiana and Illinois. None of the lines or tracks of said Western Company, run to, through or into the City of Detroit, Michigan, nor to or through any point nearer said City of Detroit than a distance of sixty miles. A

large part of the traffic of said Western Company is interstate commerce, carried between said several states and between said states and other states in the United States, and between the various states in the United States and the Dominion of Canada, over the lines of said Western Company, as either initial, intermediate, or ultimate carrier. The Western Company connects with the lines of orator at Durand in the State of Michigan. A large number of shipments of traffic, both interstate and intrastate, is made over the lines of the Western Company from various points on its own line to the City of Detroit, over the lines of the Grand Trunk Railway Company of Canada, and the lines of orator. Said Western Company has no terminals in or near the City of Detroit, and forwards traffic to said city by delivering the same to orator at the point above mentioned, or to said Grand Trunk Railway Company of Canada, at the junction of said last named Company with the Western Company at Tappan in this state, for delivery to said city.

VI.

The Grand Trunk Railway Company of Canada (hereinafter for brevity called "The Canadain Company"), is a railroad corporation organized and existing under and by virtue of the laws of the Dominion of Canada, and is a common carrier of goods and passengers, engaged in both state and interstate commerce; it owns, leases, maintains and operates lines of railroad in the State of Michigan and in the Dominion of Canada; its main lines extend from the City of Portland in the State of Maine, northwesterly to the City of Richmond in the Province of Quebec and from the City of Point Levi in said province to said City of Richmond and thence in a general southwesterly direction to the Cities of Port Huron and Detroit in this state.

VII.

The Detroit & Toledo Shore Line (hereinafter for brevity called "The Shore Line"), is a railroad corporation organized and existing under and by virtue of the laws of the States of Michigan and Ohio and is a common carrier of goods and passengers, engaged in state and interstate commerce, owning, operating and maintaining lines of railway in said States of Michigan and Ohio; the main line of said Shore Line extends from the City of Toledo, in the State of Ohio, to the City

of Detroit, in the State of Michigan, in a general northerly direction through the States of Ohio and Michigan. Said Shore Line has no terminals, and no terminal facilities of any kind in the City of Detroit, but uses, for the purposes of its traffic, the terminal facilities of orator, and also the terminal facilities of the Canadian Company, under a certain agreement, dated the 30th day of June, 1911, entered into by and between said Canadian Company and said Shore Line, a copy of which agreement is attached to this bill, marked "Exhibit A," and made a part hereof, with the same force and effect as if herein inserted; said Shore Line has no other terminal facilities or means of handling traffic to and into the City of Detroit save the terminal facilities of said Canadian Company and of orator, as set forth in said agreement.

VIII.

The freight terminal facilities of orator in the City of Detroit, Michigan, are well and judiciously located, were built in obedience to public necessity; and are properly equipped and constructed, having reference to the business of the country, and that reasonably to be expected, and are well and economically operated; its freight terminal facilities in said city represent an actual and fair value of over one million dollars, and could not, as orator is advised and believes, be replaced for the sum originally expended for their acquisition and construction; the team tracks of orator in and near the said city represent an actual and fair value of more than one hundred thousand dollars expended in the acquisition of the land upon which said tracks are constructed, and in the construction thereof, and could not, as your orator is advised and believes, be reproduced for ten times the sum originally invested. The cost of acquiring the ground, and providing the team tracks necessary for the accommodation of cars and traffic that would in the ordinary course of business as developed in the last five years, be delivered to your orator by other lines and by industries on your orator's own lines, as well as by industries along the lines of other roads in the switching boundaries of the City of Detroit, for the purpose of local switching within said boundaries from such oher roads and industries to your orator's team tracks, if your orator is required to furnish team tracks for such service, would amount to many thousands of dollars, as your orator is advised and believes.

IX.

Tracks from industries on or near your orator's lines to connections with said lines within the switching limits of said City of Detroit, called industrial sidings or tracks, either were constructed and built by said industries, or were constructed and built by orator and the expense thereof billed to said industries, and by them repaid to orator. The lands on which such industrial tracks are located, or the necessary easements over said lands for the purposes of such track, were either acquired and are held and owned by the particular industries accommodated by such tracks, or were acquired and are held by your orator for the purpose of accommodating said tracks, and without expense to your orator, either in the acquisition or maintenance of said lands, easements or tracks. Orator is not responsible for cars placed by orator or others on said tracks for the respective industries located thereon, and is not required to police said tracks in any manner whatever; whereas the team tracks of orator are laid on ground acquired by orator at a great cost, and were constructed and are maintained by orator at a great expense, and require yearly and every year large outlays of money in policing, guarding and repairing the same.

X.

Local tariffs, both state and interstate, covering switching within the switching limits of said City of Detroit, are issued under the name of the Grand Trunk Railway System (lines west of Detroit and St. Clair Rivers), hereinafter for brevity called "Grand Trunk System." Said Grand Trunk System is made up of a number of railroad lines, among which said lines are orator, the Western Company, and the Canadian Company. Said lines are lines either operated under a common management or with a common interest, and are not lines which compete with or run parallel to each other, nor are they lines which in general or to any considerable extent feed or serve the same territories or districts. When a local tariff is issued by and in the name of said Grand Trunk System, no further concurrence by any individual lines constituting such system, among them being your orator, is required, but such tariff governs and controls the rates charged and collected by orator for all services named therein.

XI.

The Legislature of the State of Michigan at its session of the year 1911 passed an act known as Act No. 139 of 1911, amending Act 300 of 1909. Section 7 of said act in sub-sections "a," "c" and "d" provides, among other things, as follows:

"(55) Sec. 7. (a) All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines; Provided, precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper.

"(57) (c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks; Provided, such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, if the corporation cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having refer-

ence to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised.

"(57a) (d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line, when required so to do: Provided, that when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers' written permission signed by the owner or lessee of such private sidings authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

Orator avers that said Act No. 139 of 1911 and said Act No. 300 of 1909 enacted by the Legislature of the State of Michigan, as set forth above in this bill, are unconstitutional, null and void as to orator and the property of orator, in so far as they require of orator or the property of orator, or allow or authorize the Commission to require of orator or its property the following services, operations, functions or uses, or any of them, viz.: That orator shall receive cars from another carrier at a junction point or physical connection with such carrier within the corporate or switching limits of the City of Detroit for transportation to orator's team tracks, or that orator shall be required to allow the use of its team tracks for cars to be hauled from said team tracks to a junction point or physical connection with another carrier, within such limits, or that orator shall be required to allow the use

of its team tracks, hold tracks or other terminal facilities to any other carrier; that orator shall be required to deliver its cars to any other carrier at a junction point or physical connection with such carrier, within the corporate or switching limits of the City of Detroit, for delivery to any other point within said limits, or to receive from such carrier at such junction point cars to be delivered to any other point of destination within said limits; that orator shall be required to allow the use of its team or hold tracks to any industry on its own lines within said limits or on the line of any other carrier within such limits; that orator shall be required to allow the use of its team tracks in any movements between said team or hold tracks, and any other team or hold tracks, either belonging to it or to any carrier within said limits; that orator shall be required to undertake, perform or take part in the business of intra-city switching or in any transportation movement from any point within the corporate or switching limits of the City of Detroit, to any other point within said limits, or to allow the use of its terminal facilities, team tracks or hold tracks within said limits for any such purpose; that orator shall be required to either receive cars from other carriers or to deliver cars to other carriers at junction points or physical connections within said limits, or receive cars from or deliver cars to industries located within said limits, where the begining and conclusion of the movements engaged in by orator are both within said limits. So far as said acts or any other acts of the State of Michigan require any of the above named services or operations, or require the use of orator's property for any such purposes, said acts are unconstitutional, null and void, and constitute the taking of the property of orator without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

XII.

On or about the 29th day of July, A. D. 1911, said Grand Trunk System issued and published a certain tariff, a copy of which was filed with the original bill filed in this cause, marked Exhibit "B," and is hereby referred to; said tariff is entitled "M. R. C. No. 236, I. C. C. No. A-1428, issued July 29, 1911, and effective September 1, 1911" (hereinafter for brevity referred to as "M. R. C. No. 236"); said tariff was duly filed with the Michigan Railroad Commission and the Interstate Commerce Commission, as required by law; said tariff among other things sets forth the rates for switching

services within the corporate limits of the City of Detroit, and as to team track service provided as follows:

"In case team track deliveries are required for the unloading of shipments received from other carriers, or when such team tracks are used for the loading of shipments for delivery to other carriers, three dollars per car in excess of the charge made for switching to or from industrial sidings will be assessed."

That said tariff also provided a charge for switching to and from industrial sidings of five dollars ($5.00), and a charge for team track delivery from junction points within the switching limits of the District of Detroit of eight dollars ($8.00).

Orator further shows that all of said charges were fair, just and reasonable, and that the difference between said charges was not unduly or unjustly discriminatory, or in violation of the Interstate Commerce Act, or any act amendatory thereof, or supplemental thereto, etc., nor of any acts in the State of Michigan, then or now in force, and then or now constitutional, valid and binding upon your orator.

XIII.

On or about the 12th day of September, 1911, one John S. Haggerty filed his complaint against the Western Company impleaded as the Grand Trunk Railway Company, and known as D. 461 on the docket of the Commission, alleging among other things that the rates for switching service published in said tariff more fully set out in Paragraph XII of this bill, were unreasonable and also that said rates resulted in discrimination against the user of the team tracks of the defendant to the extent of three dollars per car. An answer denying said averments was filed by the Western Company in the name under which it was impleaded, and hearing had on said complaint and answer before the Commission. No competent evidence showing, or tending to show, any such rates to be unreasonable, and no evidence showing, or tending to show, any of such rates to be unjustly or unduly discriminatory was introduced or offered on the part of any party to such proceeding before said Commission, but said Commission, pretending to have jurisdiction over the subject-matter and parties defendant named in said complaint, did on the 6th day of February, A. D. 1912, issue a certain order, a copy of which order is attached to this bill, marked Exhibit "C," and made a part hereof, with the same force and effect as if

herein inserted, ordering said Western Company on or before thirty days from said 6th day of February, A. D. 1912, to file and make effective a tariff removing said alleged discrimination, namely: The alleged discrimination between the charges for industrial switching and for switching between junction points and the team tracks of your orator, and further ordering said Western Company by such tariff to "publish and make effective like charges for the movement of a carload shipment received from an industry in the City of Detroit, upon said Grand Trunk Western Railway, consigned for delivery upon a team track or other siding of said road, within the same city, and for a like shipment received by said Grand Trunk Western Railway Company from a connecting carrier at a junction point within the corporate limits of the City of Detroit, consigned to team track or other siding upon said road, within the same city."

XIV.

Said Michigan Commission had no jurisdiction or authority to enter or make such order against said Western Company for the following, among other, reasons: Said Western Company had no rails within or nearer to the City of Detroit than a distance of sixty miles, and neither owned, leased or operated any lines running to or into the said City of Detroit and had no terminal facilities, team tracks or industrial sidings within said City of Detroit, and had no power to publish or make effective such tariff as was enjoined upon it by said Commission; that such an order, even if lawful and valid, could be effective only against carriers having rails leading to or into the City of Detroit, and terminal facilities and team tracks therein, and that failure to join such carriers having such entrance into the City of Detroit, and freight terminals, team tracks or industrial sidings therein, was alone and of itself sufficient to make any such order utterly null, void, and of no effect; that orator was never made a party to the complaint or to the proceedings before said Commission known as John S. Haggerty vs. Grand Trunk Railway Company et al., D. 461, in which said order was entered, and said order was not and could not have been directed against orator; that while orator was not a party to said proceeding, nevertheless such order affected the property and income of orator, in that a great number of the tracks over which the rates named in said tariff so complained of in said proceeding and forbidden by said order applied, were owned, controlled or operated by

orator, and not by said Western Company, and orator received said rates for the use of its said tracks for such switching services, of which orator could not be deprived without a hearing; that said Commission had no power to regulate the use of orator's team tracks in any movement of any shipment from any industry within the corporate or switching limits of the City of Detroit over orator's tracks, or over the tracks of any other carriers, consigned for delivery upon a team track or other siding of orator within the same city, nor over the movement of a shipment received by orator from a connecting carrier at a junction point within the corporate or switching limits of the City of Detroit, consigned to a team track or other siding of orator within the same city, or over the rates charged by orator for any such service, nor over any of the services or rates charged therefor more fully set out in Paragraph XI of this bill as amended; that the use of orator's team tracks for the purposes above set forth results in such congestion of said tracks and of orator's other terminal facilities as to constantly impede the movement of interstate and intrastate commerce over orator's tracks, for the purpose of which movements orator was incorporated; that orator was not incorporated for the purpose of local or intracity switching or drayage business; that any and all acts passed or attempted to be passed by the State of Michigan compelling orator or purporting to compel orator to open its team tracks to other carriers, or to haul the cars of other carriers, or to deliver cars to other carriers, for the purpose of local switching within the corporate limit of said city, or to perform any of the services named in said order, are unconstitutional, void and of no effect, and that to so use, or force orator to use, the property of orator, constitutes the taking of property without due process of law and in contravention of the Fourteenth Amendment to the Constitution of the United States.

XV.

Thereafter the Grand Trunk System published its new tariff entitled: "Supplement No. 4 to M. R. C. No. 236, Supplement No. 4 to I. C. C. No. A-1428, issued March 5, 1912, effective intrastate March 16, 1912, and interstate April 8, 1912 (except as noted in individual items)" (hereinafter for brevity referred to as "Supplement No. 4 to M. R. C. No. 236"), a copy of which tariff is attached to the original bill filed in this cause, marked Exhibit "E" and hereby is referred to. This tariff names a rate of five dollars ($5.00) between

industrial tracks, five dollars ($5.00) between junction points with connecting carriers, within the limits of the switching district of Detroit, and industrial tracks within said limits; eight dollars ($8.00) between industrial tracks and team tracks located on the lines of your orator within said limits; eight dollars ($8.00) between junction points of your orator with other railroad companies within said limits and team tracks within said limits; and eight dollars ($8.00) between team tracks on your orator's lines; said tariff was duly filed with the Michigan Railroad Commission, and the Interstate Commerce Commission, as required by law.

Orator further shows that said tariff was not issued under, by virtue of, or in accordance with said void and invalid order of said Commission of the 6th day of February, 1912, aforesaid, which said order was not either binding or effective upon orator, and could not be enforced against orator, and could not affect any other lines making up the Grand Trunk Railway System above named for the reasons among others given in Paragraph XIV of this bill, supra; but said Supplement No. 4 above described was issued by said Grand Trunk System in order that orator and other lines composing said System might be enabled to obtain a just and fair remuneration for the use of their said team tracks, and at the same time prevent further attack from discontented shippers, or those who pretend to be shippers, on the ground of said alleged discrimination, between team tracks and industrial sidings.

XVI.

On the 14th day of March, A. D. 1912, said John S. Haggerty filed a supplemental petition with said Commission complaining of said new tariff and alleging that the rates set forth in said new tariff, known as Supplement No. 4 to M. R. C. No. 236, are unreasonable and exorbitant and if put in effect would mean a great hardship to said Haggerty. Thereupon and by its order, dated March 15, A. D. 1912, a copy of which is hereto attached and marked Exhibit "F," with the same force and effect as if herein inserted, said Commission, pretending to have jurisdiction over said Western Company in this matter, and over the use of the team tracks of orator and over the subject-matter of intracity switching, attempted to suspend the operation of said tariff to and until the 29th day of April, A. D. 1912, in order, according to the terms of said order, that said Commission might "have an opportunity to investigate the reasonableness of such pro-

posed rate and the matter set forth in said complaint"; and orator avers that said Commission is utterly without authority of law to regulate or make any order in reference to said rates of orator complained of in said supplemental petition, or the services for which said rates were charged, or any rates named in said supplement No. 4 to M. R. C. No. 236, or any services set forth therein, for the reasons more fully set forth in Paragraphs XI and XIV of this bill; that any law or laws passed or purporting to have been passed by the Legislature of the State of Michigan authorizing or purporting to authorize said Commission to exercise any such alleged authority or jurisdiction, are null, void and of no effect and in contravention of the Constitution of the United States and the Fourteenth Amendment thereto.

XVII.

Thereafter and on, to-wit: the 26th day of March, A. D. 1912, the Grand Trunk System issued its tariff dated the 26th day of March, A. D. 1912, entitled: "Supplement No. 5 to M. R. C. No. 236," a copy of which is attached to the original bill filed in this cause, marked Exhibit "G," and hereby referred to, suspending intrastate rates named in the former tariff issued by the Grand Trunk Railway System, entitled: "Supplement No. 4 to M. R. C. No. 236," more fully described in Paragraph XV of this bill. Said suspension tariff was issued under authority of said last named order of said Commission, and said tariff was duly filed with the Michigan Commission as required by law

XVIII.

On or about March 30, 1912, said Grand Trunk System published its tariff dated March 30, 1912, entitled: "Supplement No. 6 to M. R. C. No. 236, Supplement No. 5 to I. C. C. No. A-1428" (hereinafter for brevity referred to as "Supplement No. 6"), effective as to intrastate traffic April 11, 1912, and as to interstate traffic May 8, 1912, except as noted in individual items therein named, a copy of which is attached to the original bill filed in this cause, marked Exhibit "H," and is hereby referred to; said tariff was duly filed with the Michigan commission and the Interstate Commerce Commission as required by law. Under the terms of said tariff all rates between industries having private sidings on the Grand Trunk Railway System, including the lines of orator,

and hold or team tracks on said System, and all rates between hold or team tracks on said System, and other hold or team tracks on said System, including the lines of your orator at Milwaukee Junction, Michigan (said point being within the corporate limits of the City of Detroit and within the Detroit switching limits heretofore mentioned), and all rates between junction points of all other carriers within said corporate limits of said city (except the Shore Line), and the team tracks of orator, were cancelled and said team tracks withdrawn from all intracity, intrastate and interstate switching movements, with the exception just noted. A rate of eight dollars ($8.00) on carload traffic switched between the following points, "connection with D. & T. S. L. R. R. (the Shore Line) at West Detroit, Michigan," and "hold or team tracks on the G. T. Railway System (Grand Trunk System) within the boundaries of the switching district of Detroit, Mich.," was provided where such traffic originated at or was destined to points beyond the boundaries of the switching district of said City of Detroit, upon which the Shore Line receives a revenue or road haul to or from West Detroit, Michigan.

Orator further shows that the team tracks of orator are its private property; that orator is not required to allow the use of its team tracks to other carriers, or to haul cars from or to junction points with other carriers within the switching or corporate limits of the City of Detroit to or from the team tracks of orator within said limits, or to allow the use of its team tracks in switching movements beginning and ending within the switching or corporate limits of said city, or for any of the purposes, movements or operations more fully set out in Paragraph XI of this bill as being contrary to the constitutional rights of orator, but that it has the right to use such team tracks for the purposes of its own traffic, cars and shippers.

Orator shows that the said exception is not an unjust discrimination in favor of or against any carrier or shipper, but that orator has a right to allow the use of its team tracks to other carriers under such conditions and upon such terms as it may see fit.

Orator further shows that as above set forth said Shore Line has no terminal facilities within the corporate limits of the City of Detroit, and that orator has the right to allow the use of its terminal facilities to said Shore Line upon such terms and conditions and for such remuneration as it may seem just and reasonable.

XIX.

Said Michigan Commission did on the afternoon of the tenth day of April, A. D. 1912, suspend said last named tariff, entitled: "Supplement No. 6 to M. R. C. No. 236," and threatens and gives out, and has threatened and given out that it will require orator to allow the use of its team tracks to industries on its own lines within the switching or corporate limits of the City of Detroit, and to other railroads connecting with orator at junction points within said switching or corporate limits of said City of Detroit, and to industries on the lines of said other railroad companies at rates and on conditions to be fixed and named by said Michigan Commission, and on rates and conditions similar to or equal to the rates at which orator performs other switching services.

XX.

Orator further shows that said Michigan Commission gives out and threatens that it will make orator a party to said proceedings brought by said John S. Haggerty, and to said order entered therein, and to all proceedings under said suspension of said last named tariff, and that it will require orator to continue such local switching business and will further require orator to allow the use of its terminals to or to receive from, transfer for, or deliver cars to other carriers at junction points with such other carriers in local movements within said city, to or from orator's hold or team tracks within said city, or to allow the use of its team tracks or other terminals to industries within said limits.

XXI.

Orator further avers that said order of said Commission in so attempting to regulate the use of orator's terminals, and to require orator to give the use of said terminals to other railroads engaged in like business, and suspending the tariff whereby orator attempts to withdraw said terminals from the use of other carriers as above set forth, and from the use of industries along orator's lines, and along the lines of such other carriers, and requiring orator to do a local switching business between points wholly within the corporate limits of the City of Detroit, is null, void and of no effect; said Michigan Commission has no authority or jurisdiction to regulate, manage, supervise or control the team tracks or hold tracks

of orator, or to require your orator to do a local switching business within the corporate or switching limits of Detroit, or to require orator to either yield its terminal facilities, or any of them, to any other carrier, or to haul cars for any such other carrier from or to the junction point of any such carrier within such corporate or switching limits to or from any other point of destination within such limits.

XXI-a.

Said Act of the Legislature of the State of Michigan of June 2, 1909, being Act No. 300 of 1909, together with the amendments thereto, and said respective orders, and each of them, are, in the penalties prescribed for their violation, so drastic that no owner or operator of railway property can invoke the jurisdiction of any court to test the validity thereof, except at the risk of imprisonment in jails in the various counties through which the road of your orator runs, and for that reason said Act, together with all amendments thereto, including Act 139 of the Laws of 1911 of said Legislature and said respective orders, and each of them, deny to your orator equal protection of the laws, and deprive it of its property without due process of law, and are, and each of them is, for that reason unconstitutional and void.

XXII.

Orator further shows that not only is it the sole owner and holder of a great number of the tracks covered by said unlawful orders against said Western Company, more fully set out above, but that it receives all the switching rates named in any and all of said tariffs for the switching services covered by said various orders of said commission above named, performed over or by means of said tracks so owned and held by it as aforesaid; that to require orator to allow the use of its terminal facilities against the will of your orator and on any conditions other than those demanded by orator, or to require orator to continue to allow the use of its hold or team tracks to industries on its line within the corporate or switching limits of the City of Detroit, for local switching business within such limits or to other carriers, or to require orator to receive, handle or deliver cars within said limits for such other carriers, or to receive such cars and deliver the same to its hold or team tracks, constitutes the taking of orator's

property, without just compensation and without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

XXIII.

Every freight shipment and every demand upon orator requiring orator to accept cars from or deliver cars to another carrier at a junction point within the corporate or switching limits of said City of Detroit, for a switching service between said junction point and the team tracks of your orator, and every demand for the use of the team tracks of orator for the beginning or conclusion of a switching movement wholly within the corporate limits of said City of Detroit, and every demand for the use of orator's team tracks for a switching movement to or from an industry on orator's lines between such industry and the team tracks of your orator, and every demand for the use of orator's team tracks for a switching movement to or from an industry on the lines of another carrier, and the team tracks of your orator, and every demand for any of the various services named in paragraph XI of this bill, may, under said order suspending orator's tariff, known as Supplement No. 6 to M. R. C. No. 236, more fully above described, result in an action against orator or in a criminal proceeding against its officers, agents, directors or employes and will result in an endless number of action at law and criminal proceedings.

If orator, its officers, directors, agents and employes shall refuse obedience to said order of said Commission suspending orator's tariff above described, said Commission and said Franz C. Kuhn, as Attorney General of the State of Michigan, on behalf of said Commission, will, as your orator is advised and believes, institute proceedings under and in accordance with the provisions of the Statutes of the State of Michigan, at law or otherwise, against orator, its officers, directors, agents or employes, to enforce the said order of suspension, and all other orders above set forth in this bill, and threaten to and will take proceedings against orator, its officers, directors, and employes to the same end and for the same purpose.

If orator, its officers, directors, agents and employes shall fail or refuse to put in effect tariffs fixing the right to the use of orator's team tracks on the same terms and conditions, and for the same rates as orator provides for switching between

industries, and if orator fails to publish and issue, or to concur in the publication and issue of the tariffs required by the order of the Comission of February 6th, A. D. 1912, above set forth, or if orator refuses to allow the use of its team tracks on the terms and conditions, and for the rates prescribed, or to be prescribed, by said Commission, or refuses to suspend its tariff, known as Supplement No. 6 to M. R. C. No. 236, above described, or if orator refuses to engage in switching between points within the corporate limits of the City of Detroit, or to allow the use of its team tracks for such switching movements or to allow the use of its team tracks to other carriers, or to industries on orator's lines, or on the lines of other carriers, all within such corporate or switching limits of the City of Detroit, said defendant, Franz C. Kuhn, will, as your orator is advised and believes, institute proceedings at law or otherwise under the Statutes of the State of Michigan for the purpose of enforcing said Statutes, and said orders of the Commission, and each one thereof, and the penalties and provisions thereof.

In consideration whereof, and for as much as your orator is remediless in the premises by the strict rules of the common law, and can only have relief in the premises where matters of this kind are properly cognizable and relievable, your orator prays that said acts of the Legislature of the State of Michigan, and each of them, and said orders of said Commission, and each of them be declared as to orator, its officers, directors, employes and agents to be in violation of the Constitution of the United States and null, void and of no effect in so far as they require orator to receive cars from another carrier at a junction point or physical connection with such carrier within the corporate or switching limits of the City of Detroit for transportation to orator's team tracks, or to allow the use of its team tracks for cars to be hauled from said team tracks to a junction point or physical connection with another carrier, within such limits, or to haul such cars in either of the above named movements; or to allow the use of orator's hold tracks for any of the services above named; or to allow the use of any other of its terminal facilities for any of said services; or to allow the use of its team tracks, hold tracks or other terminal facilities to any other carrier; or to deliver its cars to any other carrier at a junction point or physical connection with such carrier, within the corporate or switching limits of the City of Detroit, for delivery to any other point within said limits, or to receive from such carrier

at such junction point cars to be delivered to any other point of destination within said limits; or to allow the use of its team or hold tracks to any industry on its own lines within said limits or on the line of any other carrier within such limits; or to allow the use of its team tracks in any movements between said team or hold tracks, and any other team or hold tracks, either belonging to it or to any carrier within said limits; or to undertake, perform or take part in the business of intra-city switching or in any transportation movement from any point within the corporate or switching limits of the City of Detroit, to any other point within said limits, or to allow the use of its terminal facilities, team tracks or hold tracks within said limits for any such purpose; or to either receive cars from other carriers or to deliver cars to other carriers at junction points or physical connections within said limits, or receive cars from or deliver cars to industries located within said limits, where the beginning and conclusion of the movements engaged in by orator are both within said limits, and that Michigan Railroad Commission, and said Cassius L. Glasgow, Lawton T. Hemans and George W. Dickinson as Commissioners of said Michigan Railroad Commission, be temporarily and permanently restrained and enjoined from continuing to suspend the said tariff, entitled: "Supplement No. 6 to M. R. C., No. 236, Supplement No. 5 to I. C. C. No. A-1428," issued by said Grank Trunk Railway System (Lines West of Detroit and St. Clair Rivers), and that said Michigan Railroad Commission and said Cassius L. Glasgow, Lawton T. Hemans and George W. Dickinson, as Commissioners thereof, and that Franz C. Kuhn, as Attorney General of the State of Michigan, be temporarily and permanently restrained and enjoined from enforcing and attempting to enforce, said orders of said Michigan Railroad Commission, of February 6, A. D. 1912, and April 10, A. D. 1912, and from taking any action, step or proceeding against orator, or any of its officers, agents, directors or employes to enforce any penalties or remedies for the violation of said orders by orator, or either of them.

That said Franz C. Kuhn, as such Attorney General, and his agents and attorneys, be temporarily and permanently enjoined and restrained from taking any action, step or proceeding against orator, its officers, directors, agents and employes, to enforce the penalties and remedies specified in said Act of June 2, 1909, or in any act amendatory thereof, or supplemental thereto, or to enforce any other penalties or

remedies specified or provided in any statutes or by any other laws of the State of Michigan for failure to obey the orders of the Michigan Railroad Commission and the Acts of the State of Michigan hereinabove set out; and that your orator may have such other and further relief as may be just and equitable.

And may it please your Honors to grant unto your orator a writ of subpoena of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Michigan Railroad Commission, and said Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, commanding them, and each of them, on a day certain therein to be named, and under a certain penalty, then and there to answer but not under oath (answer under oath being hereby expressly waived) all and singular the premises, and to stand to and perform and abide by such order, direction and decree as may be made against them in the premises, and that pending the final hearing of this cause, a temporary restraining order may be issued as above prayed. And your orator will ever pray.

Detroit, Grand Haven & Milwaukee Railway Company,
By George W. Alexander,
Secretary.
Kretzinger & Kretzinger,
Chicago, Ill.,
L. C. Stanley,
Detroit, Mich.,
Its Solicitors.

United States of America, Eastern District of Michigan, Southern Division, Wayne County, Michigan, ss.

George W. Alexander, being first dutly sworn, on oath, says that he is Secretary of the Detroit, Grand Haven & Milwaukee Railway Company, complainant above named, and duly authorized to make this affidavit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

George W. Alexander.

Subscribed and sworn to before me this 27th day of April, A. D. 1912.

Arthur E. Barley,
Notary Public in and for Wayne County, Michigan.
My commission expires on 17th May, 1915.

APPENDIX.

NOTE.

Exhibit B, being the tariff entitled M. R. C. No. 236, etc.; Exhibit E (by inadvertence for "D") being Supplement No. 4 to said tariff; Exhibit G, being Supplement No. 5 to said tariff; and Exhibit H, being Supplement No. 6 to said tariff, all of which exhibits are filed with the original bill in this cause, are too unwieldly to attach to these copies of the bill.

EXHIBIT A.

AGREEMENT BETWEEN DETROIT AND TOLEDO SHORE LINE R. R. AND GRAND TRUNK RAILWAY COMPANY OF CANADA.

Memorandum of Agreement Made this thirtieth day of June, 1911, by and between the Grand Trunk Railway Company of Canada, party of the first part, hereinafter referred to as the "Grand Trunk"; and the Detroit and Toledo Shore Line Railroad, party of the second part, hereinafter called the "Shore Line."

Whereas, the parties have agreed upon the terms of interchange and the mutual handling of their business, including the accommodations for said business at Detroit, which agreement they desire to put in writing.

Therefore, this Agreement, Witnesseth, that the parties have agreed and do hereby agree mutually, as follows:

1. The Grand Trunk permits the Shore Line to use all tracks in the yards of the Grand Trunk at West Detroit, so-called, viz:—all Grand Trunk tracks west of Vinewood Avenue, for the purpose of delivering cars to the Grand Trunk, and receiving cars from the Grand Trunk; also for the purpose of interchanging cars with other Railroad Companies at West Detroit, and for loading and unloading cars within these limits.

2. Cars shall be deemed to have been delivered by and to the Grand Trunk, and the Shore Line, respectively, when placed on one of the tracks in that yard, accompanied or preceded by proper data for forwarding, and to insure delivery, and accepted by the car inspector of the receiving road; the receiving road shall be responsible for the cars, contents and per diem, after receipt of the proper data for forwarding, and to insure delivery, and until they have been accepted or rejected by its inspector.

3. The Grand Trunk shall employ and manage the station staff, warehouse staff, and yard staff at said West Detroit, including the yard engines, enginemen, firemen, switchmen and car checkers, and the business of the Shore Line and the Grand Trunk shall be handled at said West Detroit by said employes, and for that purpose the present offices, warehouses and other improvements and facilities shall be used.

4. Said employes when handling Grand Trunk business, or cars, at said West Detroit shall be considered as exclusively Grand Trunk employes, and the Grand Trunk will assume the responsibility for all injury, damage and loss arising from the acts or negligence of said employes, when so acting, and when said employes are handling Shore Line business, or cars, at said West Detroit, they shall be considered as exclusively Shore Line employes and the Shore Line will assume the responsibility for all injury, loss and damage, arising from the acts or negligence of said employes, when so acting, and when said employes are handling cars of both companies in one train, or cut of cars, at said West Detroit, they shall be considered as joint employes and the costs of all injury, damage and loss, to common property or employes, or to third parties, or property of same, arising from the acts or negligence of said employes, when so acting, shall be divided between the two Companies under their wheelage proportion based on the wheelage of that month in which the accident occurs.

5. The Shore Line will pay the Grand Trunk Companies for cars handled by them and for the Shore Line outside of the joint district mentioned in Clause 1 the regular tariff switching charge according to current tariffs, that now in effect being known as G. F. A. No. 1312, issued February 18th, 1908.

6. At any and all times, upon request from the Grand Trunk, the Shore Line will haul cars with their power between West Detroit yard, above mentioned, and either the Milwaukee Junction yard or the new yard on the Port Huron Division in the Township of Hamtramck, if the circumstances make such request necessary or desirable; and with reference to such services it is agreed that they are performed by the Shore Line as a contractor for the Grand Trunk Companies, and therefore if there be in any such haul cars for which the Shore Line under this agreement is to pay the Grand Trunk Company a switching charge that such switching charge shall be paid without abatement from the fact that they are hauled by Shore Line engine.

7. The Grand Trunk has certain warehouse facilities, including offices at the foot of Beaubien Street, and will permit business routed via the Shore Line to and from Detroit City to be handled by its staff and in its said warehouse and offices at that point, similarly with its own business. For the handling of Shore Line freight the Shore Line will pay the Grand Trunk such proportion of the total warehouse expenses

as the Shore Line tonnage shall bear to the total tonnage handled through the warehouse each month.

8. In handling said business at said Beaubien Street freight houses, the parties agree that each will assume any loss and damage to its own freight where the loss or damage arises from the acts or negligence of said staff or the use of said warehouse or appliances connected therewith. On mixed cars of City and through less car lot merchandise the Shore Line accepts responsibility for contents until accepted by the Grand Trunk at Beaubien Street freight houses.

9. Cars containing L. C. L. freight for Detroit City delivery shall be switched from West Detroit to Beaubien Street freight houses or vice versa for $5.00 per car. Cars to be computed on basis of one car for each five tons of City freight.

10. For all defective cars required to be hauled by the Grand Trunk from West Detroit to Milwaukee Junction and return for the Shore Line, on account of repairs to be made, the Shore Line will pay the Grand Trunk at the rate of $5.00 (five dollars) per car, for such service. For the "per diem" on such cars, the Shore Line shall be solely responsible.

11. The Grand Trunk will, in carrying out the terms of this agreement, give the Shore Line as prompt and efficient service as is given to its own business. The Superintendent of Terminals or other officer in charge of the Grand Trunk Terminals, at any time of congestion, shall treat Shore Line trains or cars on a parity with the trains or cars of the Grand Trunk in the matter of entrance to and use of West Detroit yard, that is to say, the Shore Line will enjoy equal rights and obligations in and to the use of the West Detroit Yards, as the Grand Trunk.

12. The Shore Line will pay to the Grand Trunk each month for the preceding month, for the said service and in maintenance of the said facilities at West Detroit, a sum which shall bear the same ratio to the total expense, of salaries, wages, etc., of the staff at West Detroit,—including fuel, lights, stationery, maintenance of tracks and buildings, etc., —as the number of cars handled for the Shore Line in interchange with the Grand Trunk Company, and all other Companies at West Detroit, bears to the total number of cars handled at West Detroit for that month.

The count of the cars handled at West Detroit is to be made on the following basis:—

Exhibit A.

EXAMPLE—100 cars arriving at West Detroit

		Shore Line In	Shore Line Out	Grand Trunk In	Grand Trunk Out
From Shore Line for Grand Trunk		44			44
50	For P. M. R. R.	3	3		
	For Industry at West Detroit	3	3		
		50	6		44
From Grand Trunk for Shore Line			15	15	
25	For P. M. R. R.			5	5
	For Industry at West Detroit			5	5
			15	25	10
From P. M. R. R. for Shore Line		5	5		
10	For Grand Trunk			5	5
		5	5	5	5

		Shore Line In	Shore Line Out	Grand Trunk In	Grand Trunk Out
From West Detroit Industry tracks					
15	For Shore Line	7	7		
	For Grand Trunk			8	8
		7	7	8	8
Total arrived—100 Shore Line			95	105	
Grand Total in and out—200.			47.50%	52.50%	

13. The Shore Line will also pay to the Grand Trunk Company:

(a) Twelve per cent. (12%) of the salary of the Superintendent of Terminals.

(b) Ten per cent. (10%) of the salary of the Detroit Agent, Chief Clerk, Assistant Cashier, Mail Clerk, Telephone Clerk and four messengers.

(c) Twenty per cent. (20%) of the salary of the Detroit Cashier, Collection Clerk, and two Collectors.

(d) Twenty-five per cent. (25%) of the Street Car and Ferry expenses of the employes of the staff of the said Grand Trunk at said Beuabien Street office, while traveling on street car and the Detroit River ferries on business in connection with yard and freight office service.

14. The Shore Line will also pay to the Grand Trunk all the wages of the employes at West Detroit, and Beaubien Street freight houses carried on the Grand Trunk "Pay-Rolls," where employed in the exclusive service of the Shore Line, such exclusive employes to be assigned to the Detroit and Toledo Shore Line work, subject to the approval of the Shore Line Superintendent.

15. The Shore Line will pay to the Grand Trunk Company in monthly cash settlements as follows:

A valuation of the Grand Trunk property tracks and station buildings west of Vinewood Avenue, which is called the West Detroit Yard, has been agreed upon at One Hundred Thousand Dollars ($100,000.00), and it has been agreed that the Shore Line shall have equal one-half use of this property, and shall pay monthly as a rental their wheelage proportion of five per cent. (5%) per annum on the said valuation, wheelage to be computed as per Clause 12.

16. The Shore Line will pay to the Grand Trunk Company, Twenty Dollars ($20.00) per month for the use of warehouse, warehouse tools, and appliances. And One Hundred Dollars ($100.00) per year for office rental and use of furniture in the said Beaubien Street freight house.

17. This agreement to remain in effect until ninety days after either party thereto shall give written notice to the other of its desire to terminate the same.

Executed in duplicate this 30th day of June, 1911, by the parties through their respective duly authorized officials.

Detroit & Toledo Shore Line R. R.
J. P. Main,
Superintendent and Traffic Manager.

Grand Trunk Railway Company of Canada.
E. H. Fitzhugh,
First Vice-President.

Recommended:
W. G. Brownlee,
General Transportation Manager.

EXHIBIT B.

LOCAL FREIGHT TARIFF No. 502-A.

Only two Supplements to this Tariff will be in effect at any time

I. C. C. No. A-1428
(See page 2 for cancellations)

M. R. C. No. 236
(See page 2 for cancellations)
Reissue—Advance

GRAND TRUNK RAILWAY SYSTEM
(Lines West of Detroit and St. Clair Rivers)
TARIFF No. 502-A
(See page 2 for cancellations)
LOCAL FREIGHT TARIFF
Naming
SWITCHING RATES
And Rules Governing
ABSORPTION OF SWITCHING CHARGES
On Carload Traffic
—Also—
TRANSFER EXPENSE
On Less Carload Traffic
Between
DEPOTS OF THIS COMPANY
—And—
DEPOTS OF CONNECTING CARRIERS
—At—
POINTS IN MICHIGAN
As Specified Herein

Issued July 29, 1911
R. L. Burnap,
Assistant General Freight Agent, G. T. Ry. System
Chicago, Ill.

Effective September 1, 1911
Chas. Clarke,
Division Freight Agent, G. T. Ry. System,
Detroit, Mich.

Ira W. Gantt,
Assistant General Freight Agent, G T. Ry. System,
Buffalo, N. Y.

Issued by H. C. Martin,
2nd Assistant General Freight Agent, G. T. Ry. System, Chicago, Ill.

TA-89

To be posted in Tariff Binder "H," page 12

* * * * *

ALPHABETICAL LIST OF POINTS AT WHICH RATES AND RULES NAMED HEREIN APPLY

STATION		Pages	STATION		Pages
Ashley	Mich.	5	Lakeland	Mich.	45
Battle Creek	Mich.	6 and 7	Lansing	"	46 and 47
Bay City	"	8 to 10	Lapeer	"	48
Cassopolis	Mich.	11	Lenox	"	49
Cedar Springs	"	12	Lowell	"	50
Charlotte	"	13	Milwaukee Jct.	Mich.	15 to 26
Chesterfield	"	14	Muskegon	"	51 and 52
Corunna	"	14	Owosso	Mich.	53
Detroit	Mich.	15 to 26	Pontiac	Mich.	54
Durand	"	27	Port Huron	"	55 and 26
Ferrysburg	Mich.	28	Port Huron Tunnel	"	55 and 56
Flint	"	28 and 29	Rochester	Mich.	57
Fort Gratiot	"	55 and 56	Saginaw	Mich.	58 to 60
Fuller	"	30	Schoolcraft	"	61
Grand Haven	Mich.	31	Sheridan	"	62
Grand Rapids	"	32 to 35	South Lyon	"	63
Greenville	"	36	Sparta	"	64
Holly	Mich.	37	Trowbridge	Mich.	65
Imlay City	Mich.	38	Vernon	Mich.	66
Ionia	"	39	Vicksburg	"	66
Jackson	Mich.	40 and 41	West Detroit	Mich.	15 to 26
Kalamazoo	Mich.	42 to 44	Wixom	"	67

LIST OF ABBREVIATIONS

A. A.....Ann Arbor.
C. K. & S.....Chicago, Kalamazoo & Saginaw.
C. N.....Cincinnati Northern.
Co.....Company.
D. & C.N.....Detroit & Cleveland Navigation.
Del. Ter.....Delray Terminal.
D. M.....Detroit Manufacturers.
D. & M.....Detroit & Mackinac.
D. & T. S. L..Detroit & Toledo Shore Line.
D. T.....Detroit Terminal.
D. T. & I.....Detroit, Toledo & Ironton.
D. & W.....Detroit & Western.
G. R. & I.....Grand Rapids & Indiana.
G. T.....Grand Trunk.
I. C. C.....Interstate Commerce Commission.
Jct.....Junction.
K. L. S. & C..Kalamazoo, Lake Shore & Chicago.
L. M.....Lansing Manufacturers.
L. S. & M. S..Lake Shore & Michigan Southern.
M. C.....Michigan Central.
Mich.....Michigan.
M. R. C.....Michigan Railway Commission.
No.....Number.
O. C.....Official Classification.
P. H. S.....Port Huron Southern.
P. M.....Pere Marquette.
P. O. & N....Pontiac, Oxford & Northern.
R. R.....Railroad.
Ry.....Railway.
Wab.....Wabash.

Exhibit B.

SWITCHING CHARGES AT POINTS IN MICHIGAN

Rule 1: The Grand Trunk Railway System will absorb the published switching charges of carriers at points named herein subject to the amounts indicated on pages 5 to 67 as a maximum under the following conditions:

(a) On carload traffic originating at or destined to a point on this System—provided the freight revenue of this System is not reduced by such absorption below $10.00 per car:

(b) On carload traffic from or to points on other railways, provided the freight revenue of this System and its connections is not reduced by such absorption below $10.00 per car:

Illustration:

Where the revenue of this System, or of this System and connections is .....$12.00 per car

If switching charge of connecting line is $5.00 per car, it will be permissible to absorb..... 2.00 per car

Freight revenue of this System or of this System and its connections ..... 10.00 per car

$3.00 per car will be collected in addition to the freight charge.

Agents of this System at forwarding or junction points will indicate on their billing the amount of switching absorbed at such points, thus enabling the Agent of this System at destination to comply fully with the above regulations.

(c) If the tariffs of this System or of its connections provide that the published rate will not include switching charges at either point of origin or destination, this System will not absorb any switching charges on traffic covered by such tariffs.

NOTES

Note 1: The freight traffic of this System originating at and received at stations named herein requires for its proper handling all of its team track facilities; in case team track deliveries are required for the unloading of

shipments received from other carriers, or when such team tracks are used for the loading of shipments for delivery to other carriers, $3.00 per car in excess of the charge made for switching to or from industrial sidings will be assessed.

Note 1-A: On inbound traffic received via this System requiring team track delivery on the lines of other carriers or upon outbound traffic loaded on team tracks of other carriers and forwarded via this System, $3.00 per car in excess of the amount absorbed for switching to or from industrial sidings will be absorbed by this System, out of the through rate, subject to Rule 1.

* * * * *

Note 10: On traffic switched to or from industries having industrial sidings on the Grand Trunk Railway System, originating at or destined to industries located on another carrier within the boundaries of the same town or city the charge of this System for such movement will be $3.00 per car.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.

(Notes 4 and 5)

AND	BETWEEN GRAND TRUNK RAILWAY SYSTEM						
	Medium of Interchange		Cost of Transfer in Cents per 100 Lbs. On Less Carload Traffic			Distance Between Freight Depots	Note Reference
	Carload Traffic	Less Carload Traffic	Household Goods	General Merchandise	Minimum, if any, per Shipment		
Anchor Line	(Dock or Dray)	Dray	3	3	5	.....	.....
Ashley & Dustin Line	(Dock or Dray)	Dray	3	3	5	.....	.....
Delray Connecting Ry.	(M.C., P.M., or Wabash)	Not interchanged	.....	.....	.....	.....	.....
Delray Terminal Ry.	Wabash	Not interchanged	.....	.....	.....	.....	.....
Detroit Manufacturers R. R.	(Direct connection)	Dray	.....	.....	.....	.....	Note 4
Detroit Terminal R. R.	(Direct connection)	Not interchanged	.....	.....	.....	.....	.....
†Detroit, Toledo & Ironton Ry.	(M.C., Wab. and P.M.)	Dray	3	3	5	.....	Note 2
†Detroit & Toledo Shore Line R. R.	(Direct connection)	Joint station	No charge	No charge	.....	.....	.....

‡Detroit & Toledo Shore Line R. R.	(connection Wabash)	Not interchanged						
Detroit & Western Ry	(connection Wabash)	Not interchanged						
‡Lake Shore & Michigan Southern Ry.	(Direct connection)	Dray	3	3	5		Note 2	
†‡Michigan Central R. R.	(Direct connection)	Dray	3	3	5		Note 2	
‡Pere Marquette R. R.	(Direct connection)	Dray	3	3	5		Note 2	
‡Wabash R. R.	(Direct connection)	Dray	3	3	5			

‡No. L. C. L. traffic interchanged at West Detroit, Mich.
†No L. C. L. traffic interchanged at Milwaukee Jct., Mich.
For explanation of Notes and Rules, see pages 3 and 4.

The rate on **Sand or Gravel** from the Detroit River consigned to Grand Trunk Ry. industrial sidings or team tracks in the city of Detroit, Mich., within the switching limits will be one and one-sixth (1 1/6) cents per 100 pounds, minimum $5.00 per car for industrial sidings and $8.00 per car for team tracks.

In all cases empty cars will be switched free in the reverse direction when charge is collected on loaded movement

SWITCHING TO OR FROM INDUSTRIES ON GRAND TRUNK SYSTEM TRACKS

The charge for switching of carload traffic from one to another industry having private sidings or from one hold or team track to another hold or team track on Grand Trunk Ry. System tracks within switching limits at Detroit, Mich., will be $5.00 per car.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued

(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Abbott Motor Car Co.	M. C.							$5.00		$5.00
Acme Box Co.	Wab.							5.00		5.00
Acme Foundry Co.	M. C.							5.00		5.00
Acme White Lead & Color Works.	M. C.							5.00		5.00
A. D. Manufacturing Co.	M. C.							5.00		5.00
Alden Sampson Mfg. Co.	G.T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Allen Bros.	M. C.							5.00		5.00
Allyne Brass & Foundry Co.	M. C.							5.00		5.00
Alluminum Casting Co.	M. C.							5.00		5.00
American Agricultural Chemical Co.	Wab.							5.00		5.00
American Agricultural Chemical Co.	L.S. & M.S.							5.00		5.00
American Blower Co.	L.S. & M.S.							5.00		5.00
American Blower Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Brass & Iron Works	Wab.							5.00		5.00
American Bridge Co.	M. C.							5.00		5.00

(Forge Dept.)	Wab.							5.00		5.00
American Car & Foundry Co. (Michigan Plant)	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Car & Foundry Co.	L.S.& M.S.							5.00		5.00
American Car & Foundry Co. (Michigan Dept.)	L.S.& M.S.							5.00		5.00
American Car & Foundry Co. (Penna. Dept.)	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Can Co.	Wab.							5.00		5.00
American Harrow Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Harrow Co.	M.C.							5.00		5.00
American Injector Co.	M.C.							5.00		5.00
American Linseed Oil Co.	D.M.							2.25		2.25
American Malting Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Motor Castings Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Naval Stores Co.	M.C.							5.00		5.00
American Radiator Co. (Detroit Plant).	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Radiator Co. (Michigan Plant)	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
American Wood Grain Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Anderson Carriage Co.	M.C.							5.00		5.00
Anderson Forge & Mach Co.	D.T.							*		*
Anheuser-Busch Co.	P.M.							5.00		5.00
Anketell Lumber & Coal Co.	D.T.							*		*
Anschutz, J. C.	M.C.							5.00		5.00
Armstrong Tanning Co.	D.T.							*		*
Armstrong Woolen Co.	D.T.							*		*
Art Stove Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Auto Parts Mfg. Co.	M.C.							5.00		5.00
Ayres & Chase	P.M.							5.00		5.00
Aylward, Richard L.	P.M.							5.00		5.00
Aylward, R. L.	Wab.							5.00		5.00
Bagley Tobacco Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Baier, Wm.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Bailey Coal Co.	M.C.							5.00		5.00
Barnes Motor Car Co.	M.C.							5.00		5.00
Barrett Mfg. Co.	P.M.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.
For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C. R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Bartholomaei, Max.	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Bartlett Co., The	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Bartlett Co., The	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Bartlett Co., The	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Beaubien Ice & Coal Co.	P. M.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Beaubien Ice & Coal Co.	Wab.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Beck Cereal Co.	P. M.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Beck Cereal Co.	Wab.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Beebe, H. A. & Co.	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Berry Bros.	D. M.	.....	.....	.....	.....	.....	.....	2.25	.....	2 25
Besancon, Geo., & Son	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Besancon, W. E.	L.S. & M.S.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Besancon, W. E.	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Beyster, John	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Beyster, John F.	Wab.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Board of Public Works (East Yd.)	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Board of Public Works (West Yd.)	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Burrell	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....

Bower Roller Bearing Co.	D. T.									
Bradford, J., & Co.	M. C.							$5.00		$5.00
Braudy, M. & Son	P. M.							$5.00		$5.00
Braun Lumber Co.	D. T.									
Brenner Coal Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Brennan, John, & Co.	M. C.							$5.00		$5.00
Briscoe Mfg. Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Briggs Mfg. Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Brown & Brown Coal Co.	M. C.							$5.00		$5.00
Brown & Brown Coal Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Brownlee & Kelly	M. C.							$5.00		$5.00
Brush Runabout Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Buchanan & Huff	L. S. & M. S.							$5.00		$5.00
Buchanan & Huff	M. C.							$5.00		$5.00
Buhl Malleable Co.	D. M.							2.25		2 25
Byram & Co.	D. M.							2.25		2 25
Cadillac Cabinet Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Cadillac Coal & Coke Co.	M. C.							$5.00		$5.00
Cadillac Motor Car Co. (Fdry Dept)	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Cadillac Motor Car Co.	M. C.							$5.00		$5.00
Caille Co., The	M. C.							$5.00		$5.00
Caille Perfection Motor Co.	M. C.							$5.00		$5.00
Calvert, J., & Sons	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Calvert, J., & Sons	L. S. & M. S.							$5.00		$5.00
Calvert, J., & Son	M.C.(W.Yd.)							$5.00		$5.00
Calvert, J., & Son	M.C.(E.Yd.)							$5.00		$5.00
Campbell Fanning Mill Co.	Wab.							$5.00		$5.00
Campbell B. Manson Co.	Wab.							$5.00		$5.00
Canada Malt Co.	Wab.							$5.00		$5.00
Canny, C. C., Coal Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			
Capitol Brass Works	D. M.							2.25		2 25
Card Lumber & Mfg. Co.	M. C.							$5.00		$5.00
Cardonia Monumental Works	Wab.							$5.00		$5.00
Caughey & Carran	M. C.							$5.00		$5.00
Caughey & Carran	P. M.							$5.00		$5.00
Central Foundry Co.	G. T.	5.00	Note 1	$5.00	$5.00	$5.00	$5.00			

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.
For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued

(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C. R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Central Heating Co.	M. C.							$5.00		$5.00
Chalmers Motor Co.	D. T.							*		*
Chicago Pneumatic Tool Co. (Boyer Plant)	M. C.							5.00		5.00
Chicago R. R. Equipment Co.	M. C.							5.00		5.00
Chicago R. R. Equipment Co.	Wab.							5.00		5.00
Chicago R. R. Equipment Co.	P. M.							5.00		5.00
Christa, P., S Sons	M. C.							5.00		5.00
City Lumber Co.	M. C.							5.00		5.00
City Lumber Co.	D. T.							*		*
City of Detroit Public Lighting Commission Power House	G. T.	$5.00	Note 1	$5.00	$5.00	$1.00	$5.00			
City of Detroit, Board of Water Commissioners	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Clark, W. C., Coal Co.	Wab.							5.00		5.00
Clayton & Lambert Mfg. Co.	M. C.							5.00		5.00
Cleveland Trin'd Paving Co.	D. M.							2.25		2.25
Clifford, I. M. & Sons	M. C.							5.00		5.00
Clifford, Geo. H. & Bros., Brick	P. M.							5.00		5.00

Co-operative Foundry Co.	P. M.							5.00		5.00
Co-operative Foundry Co.	Wab.							5.00		5.00
Corcoran, Thos. J.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Cornellie Bros.	D. T.							*		*
County Road Commissioner (Gratroit Ave. delivery)	D. T.							*		*
County Road Commissioner (Jefferson Ave. delivery)	D. T.							*		*
Cowles & Danziger	M. C.							5.00		5.00
Crescent Brass & Pin Co.	M. C.							5.00		5.00
Crystal Ice Co.	P. M.							5.00		5.00
Currie, G. E.	M. C.							5.00		5.00
Currie Cement & Coal Co.	D. M.							2.25		2 25
Currie, W. E.	D. M.							2.25		2.25
Curtis & Yale	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Daniel, Jacob, & Bro.	M. C.							5.00		5.00
DeCaussin & Susick	D. T.							*		*
Delahanty & Kennedy	M. C.							5.00		5.00
Delray Connecting Ry., Team Tracks	D. C.							2.00	5.00	7.00
Delray Ice House	Wab.							5.00		5.00
Delray Salt Co.	M. C.							5.00		5.00
Delray Terminal Ry., Team Tracks	Del. Ter.							2.00	5.00	7.00
Detroit Terminal Ry., Team Tracks	D. T.							*		*
De Man Bros.	M. C.							5.00		5.00
Department of Public Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit & Suburban Gas Co.	P. M.							5.00		5.00
Detroit Barrel Co.	M. C.							5.00		5.00
Detroit Bath Tub & Brass Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Beef Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Bending Co.	M. C.							5.00		5.00
Detroit Boat Co.	D. M.							2.25		2.25
Detroit Brass Works	M. C.							5.00		5.00
Detroit Bridge & Steel Works	M. C.							5.00		5.00
Detroit Cabinet Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Can Co.	Wab.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C. R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich.; or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Detroit Car Building and Equipment Co.	M. C							$5.00	.....	$5.00
Detroit Carriage Co	G. T	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Detroit Chemical Works	Wab							5.00	.....	5.00
Detroit Chemical Works	P. M							5.00	.....	5.00
Detroit City Electric Light Plant	G. T	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Detroit City Gas Co. (A.)	Wab							5.00	.....	5.00
Detroit City Gas Co. (B.)	M. C							5.00	.....	5.00
Detroit City Gas Co., "Station A"	P. M							5.00	.....	5.00
Detroit Coalette & Fuel Co	M. C							5.00	.....	5.00
Detroit Column & Mfg. Co	M. C							5.00	.....	5.00
Detroit Concrete & Stone Co	M. C							5.00	.....	5.00
Detroit Copper & Brass Rolling Mills	Wab							5.00	.....	5.00
Detroit Copper & Brass Rolling Mills	P. M							5.00	.....	5.00
Detroit Edge Tool Works	D. M							2.25	.....	2.25

Detroit Foundry Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Foundry Supply Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Furnace Co.	M. C.							5.00		5.00
Detroit Furniture Mfg. Co.	M. C.							5.00		5.00
Detroit Gas Light & Coke Co.	Wab.							5.00		5.00
Detroit Hay Co.	M. C.							5.00		5.00
Detroit Heating & Lighting Co.	D. M.							2.25		2.25
Detroit Hoist & Machine Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Insulated Wire Co.	P. M.							5.00		5.00
Detroit Iron Furnace Co.	M. C.							5.00		5.00
Detroit Iron & Steel Co.	M. C.							5.00		5.00
Detroit Iron & Steel Co.	Del. Con.							2.00	5.00	7.00
Detroit Krant Co.	D. & W.							2.50	5.00	7.50
Detroit Linseed Oil Works.	D. M.							2.25		2.25
Detroit Lubricator Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Lumber Co.	D. T.							*		*
Detroit Lumber Co.	M. C.							5.00		5.00
Detroit Lumber Co.	P. M.							2.25		2.25
Detroit Manufacturers R. R. Team Tracks	D. M.							2.25		2.25
Detroit Manufacturers R. R. connection with Grand Trunk.				5.00	5.00	1.00				
Detroit Mirror Works.	M. C.							5.00		5.00
Detroit Motor Car Supply Co.	D. M.							2.25		2.25
Detroit Oak Belting Co.	D. M.							2.25		2.25
Detroit Railroad Elevator Co.	G. T.	5.00	Note 1	5.00	5.00	1.00	5.00			
Detroit Range Boiler Co.	M. C.							5.00		5.00
Detroit Reduction Co.	Wab.							5.00		5.00
Detroit River Canoe Works.	D. M.							2.25		2.25
Detroit River Iron Works.	D. M.							2.25		2.25
Detroit Roofing Tile Co.	M. C.							5.00		5.00
Detroit Salt Co.	D. & W.							2.50	5.00	7.50
Detroit Salt Co.	Wab.							5.00		5.00
Detroit Salt Co.	M. C.							5.00		5.00
Detroit Sanitary Co.	P. M.							5.00		5.00
Detroit Sanitary Works.	Wab.							5.00		5.00
Detroit Screw Works.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.
For explanation of Notes and Rules, see pages 3 and 4

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R., D. T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Detroit Seamless Steel Tube Co.	Wab.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Detroit Seamless Steel Tube Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Shear Co.	G.T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Detroit Sheet Metal & Brass Works.	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Ship Building Co.	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Ship Building Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Detroit Soap Co.	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Steel Casting Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Steel Cooperage Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Steel Products Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Stoker Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Detroit Stove Works.	D. M	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Detroit Sulphite Fibre Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Detroit Sulphite Pulp & Paper Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00 (Note [illegible])	.....	5.00 (Note [illegible])
Detroit Terminal R. R. Team [illegible]	[illegible]	.....	.....	.....	.....	.....	.....	[illegible]	.....	[illegible]
[illegible]	R.	.....	.....	.....	.....	.....	.....	[illegible]	.....	[illegible]
Detroit Union Elevator Co.	Wab.	.....	.....	.....	.....	.....	.....	[illegible]	.....	[illegible]

Detroit United Railway	M. C.							5.00		5.00
Detroit United Railway	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit United Railway	D. T.							*		*
Detroit United Railway (Power House A)	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit United Railway (Power House B)	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Vapor Stove Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Vitrified Brick Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit & Western Ry., Team Tracks.	D. & W.							2.50	5.00	7.50
Detroit White Lead Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Wire-Bound Box Co.	M. C.							5.00		5.00
Detroit Wire Spring Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Detroit Wooden Pulley Co.	M. C.							5.00		5.00
Diamond Match Co.	M. C.							5.00		5.00
Dickinson, H. H.	L.S. & M.S.							5.00		5.00
Dickinson, H. H.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Dodge Bros.	M. C.							5.00		5.00
Dunbar Stone Co.	M. C.							5.00		5.00
Dupuis, A. J., Co.	D. M							2.25		2.25
Dwight Lumber Co.	M. C.							5.00		5.00
East End Boiler Works	D. M							2.25		2.25
Eaton, T. H., & Son	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Eby Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Edgar, W. H., & Son	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Edgar, W. H., & Son	M. C.							5.00		5.00
Edison Illuminating Co.	Del. Ter.							2.00	5.00	7.00
Edison Illuminating Co.	M. C.							5.00		5.00
Edison Illuminating Co.	P. M.							5.00		5.00
Elevator "A"	M. C.							5.00		5.00
Elevator "B"	M. C.							5.00		5.00
Elevator "C"	M. C.							5.00		5.00
Elevator "L"	M. C.							5.00		5.00
E. M. F. Co.	P. M.							5.00		5.00
Enterprise Foundry Co.	M. C.							5.00		5.00

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For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D. T. & I.R.R., L.S. & M.S. Ry., M.C. R.R., P. M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Epstein, A.	G.T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Esper, A., & Son	P. M.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Esper & Ford Chemical Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Everett Metzger Flanders Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fairview Coal & Supply Co.	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Fairview Foundry Co.	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Fairview Lumber Co.	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Farrand Company	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Felrath, John	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fisher, Hughes, Gelatine Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fisher Body Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Fitzpatrick Bros.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Ford Motor Co.	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Ford Motor Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Foreman, Thomas, Lumber Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Foreman, Thos. Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
[illegible]	D. M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Ginsburg & Son, R. L.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00

Goldman, A., & Co	M. C.							5.00		5.00
Goldman, H. L.	D. M.							2.25		2.25
Grabowsky Power Wagon Co.	M. C.							5.00		5.00
Grace Harbor Lumber Co.	Wab.							5.00		5.00
Grace Harbor Lumber Co.	P. M.							5.00		5.00
Grant Iron & Metal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Gratiot Lumber & Coal Co.	D. T.							*		*
Gray Motor Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Great Lakes Engineering Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Great Lakes Engineering Works	M. C.							5.00		5.00
Greenberg Bros.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Greenslade Oil Co.	M. C.							5.00		5.00
Griffin Car Wheel Co.	M. C.							5.00		5.00
Griggs & Hanna	M. C.							5.00		5.00
Grosse Pointe Lumber Co.	D. T.							*		*
Gutow, W. C.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Haggerty, J. S.	P. M.							5.00		5.00
Hammond Beef Co.	M. C.							5.00		5.00
Hammond Standish Co.	M. C.							5.00		5.00
Harding Lumber Co., H. W.	D. T.							*		*
Harrell & Nicholson Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Harrison, F. W., & Bro.	M. C.							5.00		5.00
Harton-Cato Manufacturing Co.	M. C.							5.00		5.00
Hartwick Lumber Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Hasty, J. F., & Co.	M. C.							5.00		5.00
Hayes Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Hees, McFarlane Co.	M. C.							5.00		5.00
Herreshoff Motor Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Hertz & Hosbach Co.	M. C.							5.00		5.00
Hitchcock, H. C.	M. C.							5.00		5.00
Holmes, F. B., & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Holmes, F. B., & Co.	M. C.							5.00		5.00
Home Telephone Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			

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For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Home Telephone Co.	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Houghton, Henry	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Houghton, Henry, Lime & Cement Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Houghton Henry & Sons	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Houghton, Henry	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Houghton-French Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Houghton, Wm. C.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hudson Motor Car Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Hudson Motor Car Co.	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Huebner Mfg. Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Huebner Screen Door Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Huetteman & Cramer Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Humphrey-Widman Book Case Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hunton, Myles & Weeks	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Hunton & Weeks	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Hunton & Weeks	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Co.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hupp-Johnson Forge Co.	D	.....	.....	.....	.....	.....	.....	.....	.....	.....

Hupp-Yeats Electric Car Co..	)									
Hurd, W. F., & Co.	M. C.							5.00		5.00
Hurley, J. & T.	D.M.							2.25		2.25
Hurley, J. & T.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Hurley, J. & T.	L.S.& M.S.							5.00		5.00
Hurley, J. & T.	M. C.							5.00		5.00
Huron Portland Cement Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Hutchins Car Roofing Co.	M. C.							5.00		5.00
Ideal Mfg. Co.	D.M.							2.25		2.25
Independent Brewing Co.	M. C.							5.00		5.00
International Harvester Co.	M. C.							5.00		5.00
Ireland & Matthews Mfg. Co.	D.M.							2.25		2.25
Jacob Bros.	M. C.							5.00		5.00
Jenks & Muir Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Jenks & Muir Mfg. Co.	Wab.							5.00		5.00
Jewett, Bigelow & Brooks	M. C.							5.00		5.00
Jozefiak, I. E.	M. C.							5.00		5.00
Kahl, Fred	D.M.							2.25		2.25
Kastner Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Kelsey Wheel Co.	P. M.							5.00		5.00
Kemiweld Can Co.	M. C.							5.00		5.00
Knack, Julius	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Keonig, P., Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Koenig, P. Coal Co.	M. C.							5.00		5.00
Kotcher, C. W.	D.M.							2.25		2.25
Kraft, John, Coal Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Krentler Bros.	M. C.							5.00		5.00
Kuschewski, John	P. M.							5.00		5.00
Labadie Ice Co.	P. M.							5.00		5.00
Labadie, Edwin	Wab.							5.00		5.00

*Detroit, Mich., rates will app'y on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R., D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Lake Shore & Michigan South-ern Ry., Team Tracks	L.S.& M.S.	.....	.....	.....	.....	.....	.....	(Note 1-A	.....	(Note 1-A
Lane, Chas. F.	Wab.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Lange, F., & Son	**P. M.**	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Larkins Brick Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Lauhoff Bros.	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Lavignee Mfg. Co.	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Lee & Cady	M. C.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Leech, C. W., Lumber Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Leech, E. W.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Lehr, C., Lumber Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Lewis, Henry B.	**G. T.**	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Litchenberg & Son	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Light House Supply Depot	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Lincoln Ave. Elevator	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Little, C. H., Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Little, C. H., Co.	L. S. & M. S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00

Robinson Lumber Co.	Wab.							5.00		5.00
Lowrie & Robinson	D. T.							5.00 *		5.00 *
Lozier Motor Co.	M. C.							5.00		5.00
Malcomson, A. Y.	D.M.							2.25		2.25
Manufacturers Lumber Co.	M. C.							5.00		5.00
Manzelman, Chas.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
McColgan, Albert	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
McCord Mfg. Co.	L.S. & M.S.							5.00		5.00
McCormick, P. S., & Son	M. C.							5.00		5.00
McDonald Brick & Coal Co.	L.S. & M.S.							5.00		5.00
McDonald Brick & Coal Co.	Wab.							5.00		5.00
McFadden, Mark	M. C.							5.00		5.00
McFadden, Mark	M. C.							5.00		5.00
McKerchey, J. M.	M. C.							5.00		5.00
McNamara, Michael	M. C.							5.00		5.00
McRae & Roberts	Wab.							5.00		5.00
McRae & Roberts	P. M.							5.00		5.00
M. D. T. Ice House	M. C.							5.00		5.00
Metzger Motor Car Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Mertz, John G.	M. C.							5.00		5.00
Metal Products Co.	D. T.							*		*
Meyer, R. M.	M. C.							5.00		5.00
Michigan Ammonia Co.	D. M.							2.25		2.25
Michigan Ammonia Works	M. C.							5.00		5.00
Michigan Auto Parts Co.	M. C.							5.00		5.00
Michigan Beef & Provision Co.	M. C.							5.00		5.00
Michigan Bolt & Nut Works	D. M.							2.25		2.25
Michigan Builders' Supply Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Michigan Central R. R., Team Tracks	M. C.							(Note 1-A		(Note 1-A
Michigan Copper & Brass Rolling Mills	M. C.							5.00		5.00
Michigan Carbon Works	L.S. & M.S.							5.00		5.00
Michigan Carbon Works	Wab.							5.00		5.00
Michigan Central Stock Yards	M. C.							5.00		5.00
Michigan Malleable Iron Co.	Wab.							5.00		5.00
Michigan Malleable Iron Co.	M. C.							5.00		5.00
Michigan Malleable Iron Works	P. M.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanattion of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D. T. & I.R.R., L.S. & M.S. Ry., M.C. R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Michigan Pressed Brick Co....	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Michigan Soap Works.....	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Michigan Sprocket Chain Co..	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Michigan Sprocket Chain Co..	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Michigan Stamping Co.....	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Michigan State Agricultural Soc'y ..	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Michigan Steel Boat Works....	D.M.	.....	.....	.....	.....	.....	.....	2.25 *	.....	2.25 *
Michigan Steel Casting Co.....	D. T.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Michigan Stove Co.....	D. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Michigan Wire Cloth Co.....	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Millenback Bros.	M. C.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Miller, W. A. C. Co.....	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Mincel, H.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Mistele, G.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Mitshkum, M. & Co.....	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Monagan, J.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Monarch Foundry Co.....	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Monarch Steel Casting Co....	M. C.							5.00		5.00

Moll, Wm. Iron Works	D. M.							2.25		2.25
National Can Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
National Cutlery Co.	M. C.							5.00		5.00
Nelson Morris & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Newton Beef Co.	M. C.							5.00		5.00
Noble & Co.	M. C.							5.00		5.00
Northern Engineering Works	D. M.							2.25		2.25
Northway Motor & Mfg Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Oades, Walter	D. M.							2.25		2.25
Owen Motor Car Co.	M. C.							5.00		5.00
Packard Motor Car Co.	M. C.							5.00		5.00
Parker, A. A., & Bro.	Wab.							5.00		5.00
Parker Bros. Co., Ltd.	Wab.							5.00		5.00
Parke, Davis & Co.	D. M.							2.25		2.25
Parker, Webb & Co.	M. C.							5.00		5.00
Parsons & Hobart	M. C.							5.00		5.00
Paschke, August	M. C.							5.00		5.00
Penberthy Injector Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Peninsular Paint & Varnish Co.	M. C.							5.00		5.00
Peninsular Stove Co.	M. C.							5.00		5.00
Peoples' Ice Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Pere Marquette R. R., Team Tracks	P. M.							(Note 1-A		(Note 1-A
Perfection Mfg. Co.	M. C.							5.00		5.00
Pfeiffer Brewing Co.	M. C.							5.00		5.00
Pfeiffer, Conrad	M. C.							5.00		5.00
Phoenix Wire Works	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Piggins, W. S., & Sons	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Pittmans & Dean Co.	D. T.							*		*
Pittmans & Dean Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Pittmans & Dean Co.	L. S. & M. S.							5.00		5.00
Pittmans & Dean Co.	M. C.							5.00		5.00
Pohlman & Co., Chas.	Wab.							5.00		5.00
Pohlman, Chas.	P. M.							5.00		5.00
Posselius Bros. Furniture Mfg. Co.	M. C.							5.00		5.00
Pratt, Stephen	M. C.							5.00		5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R., D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Public Lighting Commission	G.T.	$5.00	Note 1	$5.00	$5.00	$2.00	$5.00	.....	.....	.....
Public Lighting Commission	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Railway Steel Spring Co.	M.C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Rankin, Wm.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Rankin, Wm.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Reinforced Concrete Pipe Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Rennie Ice and Coal Co.	D. & W.	.....	.....	.....	.....	.....	.....	2.50	$5.00	7.50
Reynolds Motor Co.	D.T.	.....	.....	.....	.....	.....	.....	*	.....	*
Restrick, C. W.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Rickel, H. W., & Co.	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
River Rouge Lighting Station	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Riverside Scrap Iron & Metal Co.	D.M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Riverside Storage & Cartage Co., Ltd.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Robertson, R., & Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Roe, Stephens Mfg. Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
[illegible]	[illegible]	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Schneider Brick Co.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Schultie Soap Co.	P.M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Schumacher Bros.	M.C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
[illegible]	G.T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....

Schwarzchild & Sulzberger Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Scotten, Dillon Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Scotten, Dillon & Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Scripps Motor Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Scully, W. J., Mfg. Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Seamless Steel Tube Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Shekell Bros.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sibley, F. M., Lumber Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sibley, F. M., Lumber Co.	D. T.	.....	.....	.....	.....	.....	.....	*	.....	*
Sinclair, J. T.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Singer, J.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Skae, E. A.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Slater Construction Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Smith Coal Dock	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Smith, H. H., Crapo	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Smith, John E.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Smith, Stanley B., & Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Snyder, Geo. P.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Solvay Process Co.	Del. Conn.	.....	.....	.....	.....	.....	.....	2.00	5.00	7.00
Speck, Hopp & Gresky	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Springwell Brick Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Srere Bros.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Srere Bros.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Standard Foundry Co.	D. M.	.....	.....	.....	.....	.....	.....	2.25	.....	2.25
Standard Oil Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Star Corundum Wheel Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Star Corundum Wheel Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
State Coal & Lumber Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Stark & Neckel	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Stearns, F., & Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Steffes, M., & Son	L. S. & M. S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Stephens, Roe Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Stephens, Roe Mfg. Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sterling Coal Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00

*Detroit, Mich., rates will apply on carload traffic to or from all industries and tram tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.—Continued
(Notes 4 and 5)

TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amount per Car absorbed under Rule 1		
				Connection with						
Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G.T. Ry.	G.T. Ry. Team Tracks	D. & T.S.L.R.R. D.T. & I.R.R., L.S. & M.S. Ry., M.C.R.R., P.M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Stevens, F. B.	M. C.	.....	.....	.....	.....	.....	.....	$5.00	.....	$5.00
Stewart Bros	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Stott, David	G. T.	$5.00	Note 1	$5.00	$5.00	$5.00	$5.00	.....	.....	.....
Stott, David	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sullivan, Daniel	L.S.& M.S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sullivan Beef Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Sun Oil Co.	M. C.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Swedish Crucible Steel Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Swift & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	.....	5.00	.....	5.00
Swift & Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	$3.00	8.00
Switzer, F. J.	D. T. & I.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Talbot-Irwin Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Taylor Water Tube Boiler Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Ternes Coal & Lumber Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Theisen, Michael J.	L.S. & M.S.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Thorpe, Chas. M.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Timkin-Detroit Axle Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Timkin-Detroit Axle Co.	P. M.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Trowbridge, F. C.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Turner & Butler	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Union Depot Elevator	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Union Terminal Association	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Union Transfer & Storage Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Union Transfer & Storage Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Van Antwerp & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00	.....	.....	.....
Van Dyke Motor Car Co.	Wab.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Van Dyke Motor Car Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Vaughn, Wm. & Co.	M. C.	.....	.....	.....	.....	.....	.....	5.00	.....	5.00
Victor Manufacturing Co.	M. C.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Vigeo Coal & Wood Co.	G. T.	.....	Note 1	5.00	5.00	5.00	5.00	.....	.....	5.00

Vinton Co.	G. A.								(Note 1-A	(Note 1-A
Voss, J. H., & Co.	M. C.									
Wabash R. R., Team Tracks	Wab.									
Wadell, J. P., Show Case & Cabinet Co.	M. C.							5.00		5.00
Wallace-Hugh Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Warren Motor Car Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Wayne Fuel & Feed Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Webb, R. S.	M. C.							5.00		5.00
Weber, J. F.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
We'ded Steel Barrel Co.	D. M.							2.25		2.25
Western Union Telegraph Co.	M. C.							5.00		5.00
Whitehead & Kales Iron Works	M. C.							5.00		5.00
Widman, C. D., & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Widman, J. C., & Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Williams Bros. Co., The	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Wilson, C. R., Body Co.	M. C.							5.00		5.00
Wolf, F. H., Brick Co.	M. C.							5.00		5.00
Wolf & De	M. C.							5.00		5.00
Wolverine Mfg. Co.	G. T.	5.00	Note 1	5.00	5.00	5.00	5.00			
Woodmere Cemetery	Wab.							5.00		5.00
Worchester Salt Co., (Ecorse Mich.)	M. C.							2.25		2.25
Yeomans Box Co.	D. M.							5.00		5.00
Yipe, M. J.	Wab.									

*Detroit, Mich., rates will apply on carload traffic to or from all industries and team tracks on the Detroit Terminal R. R.

For explanation of Notes and Rules, see pages 3 and 4.

(The remainder of Exhibit "B" Tariff M. R. C. No. 236, I. C. C. No. 1428, consists of tables of switching tariffs similar to the above except that they apply to other shipping points in Michigan, the same as the above tables apply to Detroit. It is not deemed essential that tables of switching tariffs relating to other cities be printed in full, and such tables are therefore omitted under stipulation of counsel for the respective parties.)

Supplement No. 3 is in effect and contains all changes fr
the original tariff that are effective on the date here

Supplement No. 3 to
M. R. C. No. 236
Cancels Supplement No. 2

Supplement No.
I. C. C. No. A-
Cancels Supplement N

REISSUE—REDUCTION—ADVANCE

GRAND TRUNK RAILWAY SYSTEM

(Lines West of Detroit and St. Clair Rivers)

Supplement No. 3 To

TARIFF No. 502-A

Cancels Supplement No. 2

LOCAL FREIGHT TARIFF

Naming

SWITCHING RATES

And Rules Governing

ABSORPTION OF SWITCHING AND TERMIN

CHARGES

On Carload Traffic

—Also—

TRANSFER EXPENSE

On Less Carload Traffic

Between

DEPOTS OF THIS COMPANY

—And—

DEPOTS OF CONNECTING CARRIERS

—At—

POINTS IN MICHIGAN

As Specified in Tariff and Herein

Issued February 21, 1912

EFFECTIVE Intrastate March 5, 1912. Interst
March 25, 1912
(Except as noted in individual items.)

R. L. Burnap,
Assistant Freight Traffic Manager
G. T. Ry. System,
Chicago, Ill.

Ira W. Gantt,
Assistant General Freight Agent, G. T. Ry. System,
Buffalo, N. Y.

Chas. Clarke,
Division Freight A
G. T. Ry. Sy
Detroit, Mi

E. F. Flinn,
Division Freight A
G. T. Ry. Sy
Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicag

TA-89

Exhibit B.

M. L. 86 To be posted in Tariff Binder "H," page 12

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Note 10.—On traffic handled on an inter-switch movement to or from industries only having industrial sidings on the Grand Trunk Railway System originating at or destined to industries having industrial sidings located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.
(Notes 4 and 5)

				TO OR FROM		Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO						Maximum Amt. per Car absorbed under Rule 1		
							Connection with							
				Industrial Sidings and other Tracks named below	Railroad Location	Industrial Sidings on G T. Ry.	G. T. Ry. Team Tracks	D. & T.S.L.R.R., D.T. & I. R. R., L.S. & M.S. Ry., M.C.R.R., P. M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich. Note 10	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich. Note 10	L. S. & M. S. Ry. at Brush St. Yard, Mich. Note 10	Detroit Manufacturers R. R. Detroit Terminal R. R. Note 10	Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Intrastate Nov. 20, 1911	Sup. No. 1	Change	18	City of Detroit, Public Lighting Commission Power House	G.T...	$5.00	Note 1	$5.00	$5.00	$2.00	$5.00	.....	...	.....
		Change	19	Detroit City Electric Light Plant	G.T...	5.00	Note 1	5.00	5.00	2.00	5.00	.....	...	.....
		Add	21	Grand Trunk Railway System Fuel Yards (Milwaukee Jct.)	G.T...	.....	.....	5.00	5.00	5.00	5.00	.....	...	.....
Interstate Dec. 11, 1911	Re-issue	Cancel	22	Kraft, John, Coal Co....	G.T...	.....	.....	.....	.....	.....	.....	$5.00	...	$5.00
		Change	23	Lee and Cady.....	M. C...	.....	.....	.....	.....	.....	.....	.....	...	.....
		Cancel	24	Michigan State Agricultural Society	.....	.....	.....	.....	.....	.....	.....	.....	...	.....
		Cancel	25	Schillinger Bros.	.....	.....	.....	.....	.....	.....	.....	.....	...	.....

For explanation of notes and rules, see pages 3 and 4 of tariff. (R) Reduction.

EXHIBIT C.

ORDER OF MICHIGAN RAILROAD COMMISSION OF FEBRUARY 6TH. STATE OF MICHIGAN.

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission held at its offices in the City of Lansing on the 6th day of February, A. D. 1912.

Present, Hon. C. L. Glasgow, Chairman,
Hon. Lawton T. Hemans,
Hon. G. W. Dickinson,
Commissioners.

John S. Haggerty, Complainant,

vs.

The Grand Trunk Western Railway Company,
Defendant.

D—461

Complaint was filed in the above entitled matter on the 12th day of September, 1911, upon which complaint issued was joined and proofs taken. After duly considering the proofs submitted and arguments and briefs of counsel, this Commission finds that the allegations of said complaint are sustained; that the charge by the Grand Trunk Western Railway Company in and by its published tariffs whereby a different and a greater rate is charged and exacted for the movement of a carload shipment from a junction point with a connecting road to a team track on said Grand Trunk Western Railway than is charged and exacted for the movement of a like shipment from an industry to a team track upon the same line constitutes and is an undue and unjust discrimination.

Therefore, by virtue of the authority vested in us by law, it is hereby ordered that the Grand Trunk Western Railway Company do on or before thirty (30) days from this date issue, file and make effective a tariff removing such discrimination, and by such tariff publish and make effective like charges for the movement of a carload ship-

ment received from an industry within the City of Detroit, upon the said Grand Trunk Western Railway, consigned for delivery upon a team track or other siding of said road within the same city, and for a like shipment received by said Grand Trunk Western Railway from a connecting carrier at a junction point withn the corporate limits of the City of Detroit, consigned to team track or other siding upon said road within the same city.

C. L. Glasgow, Chairman.
G. W. Dickinson, Commissioner.
Lawton T. Hemans, Commissioner.

COMPLAINANT'S EXHIBIT "E."

SUPPLEMENT No. 4 TO TARIFF No. 502-A

Supplement No. 3 and 4 are in effect and contain all changes from the original tariffs that are effective on the date hereof.

Supplement No. 4 to
M. R. C. No. 236

Supplement No. 4 to
I. C. C. No. A-1428

Exhibit E.

ADVANCE
GRAND TRUNK RAILWAY SYSTEM
(Lines West of Detroit and St. Clair Rivers)
Supplement No. 4 To
TARIFF No. 502-A
LOCAL FREIGHT TARIFF
Naming
SWITCHING RATES
And Rules Governing
ABSORPTION OF SWITCHING AND TERMINAL CHARGES
On Carload Traffic
—Also—
TRANSFER EXPENSE
On Less Carload Traffic
Between
DEPOTS OF THIS COMPANY
—And—
DEPOTS OF CONNECTING CARRIERS
—At—
POINTS IN MICHIGAN
As Specified in Tariff and Herein

Issued March 5, 1912
EFFECTIVE Intrastate March 16, 1912. Interstate April 8, 1912
(Except as noted in individual items.)

R. L. Burnap,
Assistant Freight Traffic Manager,
G. T. Ry. System,
Chicago, Ill.

Chas. Clarke,
Division Freight Agent,
G. T. Ry. System,
Detroit, Mich.

Ira W. Gantt,
Assistant General Freight Agent, G. T. Ry. System,
Buffalo, N. Y.

E. F. Flinn,
Division Freight Agent,
G. T. Ry. system,
Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicago, Ill.

TA-89
M. L. 86 To be posted in Tariff Binder "H," page 12

Exhibit E.

Date Effective	Tariff Reference	Add, Cancel, Change	Pages	
		Change	4	**Change Note 10** of Supplement No. 3 to read as follows: **Note 10.**—On traffic handled on an inter-switch movement to or from **industries only having industrial sidings** on the Grand Trunk Railway System originating at or destined to **industries having industrial sidings** located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car. This Note will **not** apply within the boundaries of the switching district of Detroit, Mich. For rates applicable at these points, see Supplement No. 4.
Intrastate Mar. 16, 1912 Interstate April 8, 1912	Sup. No. 4	Change	15	**Change page 15,** naming switching rates, as follows: **Switching Charges to or from Industries and Hold or Team Tracks on Grand Trunk Railway System and Junction Points with Connecting Carriers Within the Switching District of Detroit, Mich.** The following rates will be charged on carload traffic switched between industries and between team tracks within the boundaries of the switching district of Detroit, Mich.:

BETWEEN	AND	Rate in Dollars per Car
Industries having private sidings on G. T. Ry. System	Industries having private sidings on G. T. Ry. System	$5.00
Industries having private sidings on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	8.00
Hold or team tracks on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	(A)8.00
Junction points with connecting carriers within the boundaries of the switching district of Detroit, Mich.	Industries having private sidings on G. T. Ry. System within the boundaries of the switching district of Detroit, Mich.	(A)5.00
	Hold or team tracks on the G. T. Ry.	8.00

EXHIBIT F.

ORDER OF MICHIGAN RAILROAD COMMISSION OF MARCH 15TH. STATE OF MICHIGAN.

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission held at its offices on the 15th day of March, A. D. 1912.

In the matter of the application of John S. Haggerty, Complainant, vs. Grand Trunk Western Railway Company, Defendant, to have the effective date of Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236 postponed 45 days. } D-461

Complaint having been made by John S. Haggerty, of Detroit, Michigan, against Grand Trunk Western Railway Company, setting forth that the said Grand Trunk Western Railway Company has issued a certain tariff known as Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236, effective March 16th, 1912, which said supplement shows an advance in rates for team track delivery within the switching district of the City of Detroit, and said complainant alleging that the rates set forth in said Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236 are unreasonable and exorbitant, and if put in effect would mean a great hardship to said John S. Haggerty:

Now, therefore, by virtue of the authority vested in us by law, it is ordered that the date on which said rate mentioned and set forth in said Supplement No. 4 to M. R. C. Tariff No. 236, to become effective March 16, 1912, is hereby postponed until April 29, 1912, in order that this Commission may have an opportunity to investigate the reasonableness of such proposed rate and the matter set forth in said complaint.

C. L. Glasgow,
Chairman.

COMPLAINANT'S EXHIBIT "G."

SUPPLEMENT No. 5 TO TARIFF No. 502-A

Supplements Nos. 3, 4 and 5 to M. R. C. No. 236 are in effect and contain all changes from the original tariff that are effective on the date hereof

Supplement No. 5 to M. R. C. No. 236

GRAND TRUNK RAILWAY SYSTEM
(Lines West of Detroit and St. Clair Rivers)
Supplement No. 5 To
TARIFF No. 502-A
LOCAL FREIGHT TARIFF
Naming
SWITCHING RATES
And Rules Governing
ABSORPTION OF SWITCHING AND TERMINAL CHARGES
On Carload Traffic
—Also—
TRANSFER EXPENSE
On Less Carload Traffic
Between
DEPOTS OF THIS COMPANY
—And—
DEPOTS OF CONNECTING CARRIERS
—At—
POINTS IN MICHIGAN
As Specified in Tariff and Herein

The effective date of Intrastate rates named in Supplement No. 4 to M. R. C. No. 236, Tariff No. 502-A, is postponed until April 29, 1912. Pending reissue, restoration or cancellation of the Intrastate rates named in Supplement No. 4 to M. R. C. No. 236, Tariff No. 502-A the rates named in M. R. C. No. 236, Tariff No. 502-A and Supplement No. 3, will apply.

Issued under authority of Michigan Railroad Commission of March 15, 1912. File D-461.

ISSUED MARCH 26, 1912

R. L. Burnap,
Assistant Freight Traffic Manager,
G. T. Ry. System,
Chicago, Ill.

Chas. Clarke,
Division Freight Agent,
G. T. Ry. System.
Detroit, Mich.

Exhibit G.

Ira W. Gantt,
Assistant General Freight Agent, G. T. Ry. System, Buffalo, N. Y.

E. F. Flinn,
Division Freight Agent, G. T. Ry. System, Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicago, Ill.

TA-89
M. L. 86 To be posted in Tariff Binder "H," page 12

COMPLAINANT'S EXHIBIT "H."

SUPPLEMENT No. 6 TARIFF No. 502-A

Supplements No. 3 and 5 to I. C. C. No. A-1428 are in effect and contain all changes from the original tariff that are effective on the date hereof

Supplements No. 3 and 6 to M. R. C. No. 236 are in effect and contain all changes from the original tariff that are effective on the date hereof

Supplement No. 6 to M. R. C. No. 236 Cancels Supplement No. 4 and 5.

Supplement No. 5 to I. C. C. No. A-1428 Cancels Supplement No. 4

GRAND TRUNK RAILWAY SYSTEM

(Lines West of Detroit and St. Clair Rivers)

Supplement No. 6 to

TARIFF No. 502-A

Cancels Supplements No. 4 and 5

LOCAL FREIGHT TARIFF

Naming

SWITCHING RATES

And Rules Governing

ABSORPTION OF SWITCHING AND TERMINAL CHARGES

On Carload Traffic

—Also—

TRANSFER EXPENSE

On Less Carload Traffic

Between

DEPOTS OF THIS COMPANY

—And—

DEPOTS OF CONNECTING CARRIERS

—At—

POINTS IN MICHIGAN

As Specified in Tariff and Herein

Issued March 30, 1912

EFFECTIVE. Intrastate April 11, 1912. Interstate May 8, 1912.

(Except as noted in individual items.)

R. L. Burnap, Assistant Freight Traffic Manager,

Chas. Clarke, Division Freight Agent.

Exhibit H.

G. T. Ry. System,
Chicago, Ill.

Ira W. Gantt,
Assistant General Freight
Agent, G. T. Ry. System,
Buffalo, N. Y.

G. T. Ry. System,
Detroit, Mich.

E. F. Flinn,
Division Freight Agent,
G. T. Ry. System,
Chicago, Ill.

Issued by S. L. Strauss,
Chief of Tariff Bureau, G. T. Ry. System, Chicago, Ill.

TA-89
M. L. 86 To be posted in Tariff Binder "H," page 12

Date Effective	Tariff Reference	Add, Cancel, Change	Pages	
		Change	3	**Note 1** will not apply at Detroit, Milwaukee Jct., or West Detroit, Mich. This has the effect of canceling rates between and to and from team tracks of this System at these points, except as otherwise provided in this Supplement.
		Change	4	**Change Note 10** of Supplement No. 3 to read as follows: **Note 10.**—On traffic handled on an inter-switch movement to or from **industries only having industrial sidings** on the Grand Trunk Railway System originating at or destined to **industries having industrial sidings** located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car. This Note will **not** apply within the boundaries of the switching district of Detroit, Mich. For rates applicable at these points, see Supplement No. 6.
				DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH. **(Notes 4 and 5 of tariff)**
		Cancel	15	Cancel rates on **Sand** and **Gravel** from the Detroit River to Grand Trunk Railway industrial sidings and team tracks, leaving no rates in effect.
Intrastate April 11, 1912	Sup. No. 6	Cancel	15	**Cancel** rates provided for on page 15 of tariff under the following caption: **"Switching to or from Industries on Grand Trunk System Tracks."**
				Except as otherwise specifically provided for herein, the following rates will be charged on carload traffic switched between points within the boundaries of the switching district of Detroit, Mich.

Interstate May 8, 1912	Sup. No. 5			**BETWEEN**	**AND**	**Rate in Dollars per Car**
				Industries having private sidings on G. T. Ry. System	Industries having private sidings on G. T. Ry. System	$5.00
		Change	15	Industries having private sidings on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	(1)
				Hold or team tracks on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	(1)
				Junction points with connecting carriers within the boundaries of the switching district of Detroit, Mich.	Industries having private sidings on G. T. Ry. System within the boundaries of the switching district of Detroit, Mich.	5.00
				[illegible]	[illegible]	[illegible]

Exhibit H.

DETROIT, MILWAUKEE JCT. AND WEST DETROIT, MICH.

(Notes 4 and 5 of Tariff.)

Intrastate April 11, 1912	Sup. No. 6			TO OR FROM Industrial Sidings and other Tracks named below	Railroad Location	Switching Rate per Car Assessed by Grand Trunk Railway System FROM OR TO: Industrial Sidings on G. T. Ry.	G. T. Ry. Team Tracks	Connection with: D. & T.S.L.R.R., D. T. & I. R. R., L. S. & M. S. Ry., M. C. R. R., P. M. R.R., Wab.R.R. at West Detroit, Mich., or M.C. R.R. at Milw.Jct.,Mich.	L. S. & M. S. Ry. or Wab. R. R. at Lake Shore Jct., Mich.	L. S. & M. S. Ry. at Brush St. Yard, Mich.	Detroit Manufacturers R. R. Detroit Terminal R. R.	Maximum Amt. per Car absorbed under Rule 1: Terminal Roads Charge	Intermediate Roads Charge	Total Charge
Interstate	Sup. No. 5													
May 8, 1912		Cancel	16 to 26	Eliminate reference to	Note 1	shown	on pages	16 to 26, inclusive,		of tariff.				
		Change	18	City of Deroit, Public Lighting Commission Power House	G.T.	$5.00	.....	$5.00	$5.00	$2.00	$5.00	.....	...	.....
		Change	19	Detroit City Electric Light Plant	G.T.	5.00	.....	5.00	5.00	2.00	5.00	.....	...	.....
		Change	19	Detroit Railroad Elevator Company	G.T.	5.00	.....	5.00	5.00	1.00	5.00	.....	...	.....
		Change	25	Public Lighting Commission	G.T.	5.00	.....	5.00	5.00	2.00	5.00	.....	...	.....

(1) Rates provided in Supplements superseded by this issue are hereby canceled, leaving no rates in effect.

(2) Applies only on traffic originating at or destined to points beyond the boundaries of the switching district of Detroit, Mich., upon which the Detroit & Toledo Shore Line R. R. receives a revenue or road haul to or from West Detroit, Mich.

AFFIDAVIT OF LAWRENCE H. NOLAN, IN SUPPORT OF BILL.

(Filed April 27, 1912.)

UNITED STATES OF AMERICA.

State of Michigan, Eastern District, County of Wayne, ss.

Lawrence H. Nolan, being first duly sworn, deposes and says that he is Superintendent of Terminals of the line of railroad of the Detroit, Grand Haven & Milwaukee Railway Company in Michigan, and has been such Superintendent of Terminals for about five years last passed. He has been engaged in the railroad business about thirty years and is familiar with the business of said Company and the railroad business generally in the City of Detroit.

Deponent states that he has been within the last day or two informed, and has good reason to believe, that Michigan Railroad Commission, defendant in the bill of complaint brought by said company against said Commission and others, in support of which bill this affidavit was filed, threatens and gives out that it will and is about to correct certain orders named in said bill entered in the case entitled John S. Haggerty vs. Grand Trunk Railway Company, No. D-461 on the docket of the Commission so as to include or bring in said Company as party to said proceedings and to thus require said Company to obey the order set out in said bill dated April 10, 1912, suspending the tariff issued by the Grand Trunk Railway System (Lines west of Detroit and St. Clair Rivers) entitled, Supplement No. 6 to M. R. C. No. 236, Supplement No. 5 to I. C. C. No. A-1428; effective intrastate April 11, 1912, and interstate May 8, 1912, duly filed with said Michigan Railroad Commission and with the Interstate Commerce Commission; and to thus require said Company to receive for delivery upon its team tracks in Detroit cars delivered to it for such purposes from other railroad companies in the said City, at junction points within the switching limits of said City and from shippers upon private sidings therein.

Deponent further says that the team tracks of complainant in said bill are no greater in capacity than are absolutely required for the business of said Company, for the accommodation of its own shippers and traffic, and are daily crowded to their capacity; that deponent is familiar with the effect of the requirements of local or intra-city switching, and the

switching of car from junction points of other railroads within the switching districts of the City of Detroit, to the team tracks of said Company, within the last year, and that such switching has so congested the tracks of said Company as to seriously affect the interstate and intrastate business thereof; that said Company is in the daily conduct of freight business on said team tracks, both intrastate and interstate, and it is not possible to conduct the business required by the orders above named of the Michigan Railroad Commission upon the team tracks at their present capacity.

Deponent further says that it will be impossible for said Company to perform the additional services required by the said orders of said Michigan Railroad Commission without buying additional land and building additional tracks for that purpose; that there is no vacant land adjacent or convenient to said Company's tracks which can be acquired and used for team track purposes; that it will be necessary to purchase and demolish buildings in order to lay such additional team tracks and this could only be done at a cost of many hundreds of thousands dollars.

Deponent further says that if said Company shall be required to give notice of application for injunction before it shall be allowed to cease and discontinue said service, it will of necessity be required to lose much traffic which belongs to its own line each day, by reason of the crowding out of such traffic from such team tracks; such loss of traffic is a loss each day the amount of which cannot be ascertained or stated, but which is very large.

Deponent further says that to require it to obey said order of said Michigan Railroad Commission will cause to said Railroad Company irreparable injury and irrecoverable damages in the nature of loss of traffic, claims for damages and delays of all its traffic.

Lawrence H. Nolan.

Subscribed and sworn to before me this 26th day of April, A. D. 1912.

Eugene S. Clarkson,
Notary Public, Wayne County.

My commission expires Apr. 9, 1915.

THE ANSWER OF THE MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON AND FRANZ C. KUHN, THE ABOVE NAMED DEFENDANTS, TO THE AMENDED BILL OF COMPLAINT OF THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY, COMPLAINANT.

(Filed May 28th, 1912.)

UNITED STATES OF AMERICA.

THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

Detroit, Grand Haven & Milwaukee Railway Company, a corporation,

Complainant,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn,

Defendants.

The defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto, say:

I.

The defendants admit the allegations contained in the first paragraph of said bill.

II.

The defendants admit the allegations contained in the second paragraph of said bill.

III.

As to the matters contained in the third paragraph of said bill, the defendant have no knowledge or information sufficient to constitute a belief and therefore neither admit nor deny the same but leave complainant to its proof thereof.

IV.

As to the matters contained in the fourth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

V.

As to the matters contained in the fifth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

VI.

As to the matters contained in the sixth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

VII.

As to the matters contained in the seventh paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

VIII.

As to the matters contained in the eighth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

IX.

As to the matters contained in the ninth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

X.

As to the matters contained in the tenth paragraph of said bill, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

XI.

The defendants admit that the Legislature of the State of Michigan at a session in the year 1911 passed an act known as act No. 139 of the Public Acts of 1909; and that section seven of said act in subsections "a," "c" and "d," provides among other things as stated in said 9th paragraph of said bill.

The defendants deny the other allegations contained in said 9th paragraph of said bill.

XII.

Answering the twelfth paragraph of said bill, the defendants admit the matters therein alleged, relative to the issuance, publication and filing of the tariffs therein mentioned, but deny that the charges therein fixed were fair, just and reasonable, and deny that the difference between said charges was not unduly or unjustly discriminatory, or in violation of any Act of the State of Michigan, then or now in force, and then or now constitutional, valid and binding upon complainant.

XIII.

Answering the 13th paragraph of said bill, the defendants admit that on or about the 12th day of September, 1911, one John S. Haggerty filed his bill of complaint against the Grand Trunk Western Railroad Company, said complaint being known on the docket as D-461; that said complaint alleged among other things that the rates for switching service published in the tariffs referred to in paragraph 10 of said bill were unreasonable and resulted in discrimination against the user of the team tracks of said Grand Trunk Western Company to the extent of three dollars per car; that an answer denying said averments was filed by the Western Company in the name under which it was impleaded; that a hearing was had on said complaint and answer before said

Commissioner; and that on the 6th day of February, A. D. 1912, said Commission issued a certain order, a copy of which order is attached to said bill of complaint, marked Exhibit "D," and that in said order of said Western Company was directed to file and make effective a tariff removing said discrimination, as stated in said 11th paragraph of said bill of complaint.

The defendants deny that no competent evidence showing or tending to show any such rates to be unreasonable, and no evidence showing or tending to show, any of such rates to be unjustly or unduly discriminatory was introduced or offered on the part of any party to such proceedings before said Commission. The defendants expressly aver that a full hearing was had before said Commission, and that the order of said Commission was made after giving ample opportunity for hearing and after considering all of the evidence offered.

XIV.

Answering the 14th paragraph of said bill, the defendants say that they are informed and believe that said Grand Trunk Western Railway Company has no tracks within or near the City of Detroit, and that said complaint of John S. Haggerty and said order of the Commission of February 6th, 1912, were erroneously directed against said Grand Trunk Western Railroad Company.

Further answering the 14th paragraph of said bill, the defendant, the Michigan Railroad Commission, says that it has cancelled said order of February 6th, 1912, by an order of the Commission dated the 14th of May, 1912, a copy of which order is hereto attached marked Exhibit "A" and made a part of this answer with the same force and effect as if herein inserted.

Further answering the said 14th paragraph of said bill these defendants deny that any acts passed by the State of Michigan compelling complainant to open its team tracks to other carriers, or to haul the cars of other carriers, within the City of Detroit, are unconstitutional; and deny that to so use or force complainant to use its property in the hauling of such cars of other companies over its tracks will constitute the taking of its property without due process of law, and in contravention of the 14th Amendment to the Constitution of the United States. The defendants expressly aver that if said complainant is entitled to do business in the State of

Michigan at all, it is required to do such business under the laws of such state which require the interchange of traffic complained of; that that complainant by doing business in the State of Michigan has agreed to comply with the requirements of the laws of the State relative to interchange of traffic.

Further answering said 14th paragraph of said bill these defendants say that as to the other matters therein alleged they have no knowledge or belief sufficient to constitute a belief, and therefore neither admit nor deny the same but leave complainant to its proof thereof.

XV.

Answering the 15th paragraph of said bill, the defendants admit the matters therein alleged, relative to the issuance, publication and filing of the tariffs therein mentioned, but as to the reasons for issuing said tariffs as therein alleged, the defendants have no knowledge or information sufficient to constitute a belief and therefore neither admit nor deny the same but leave complainant to its proof thereof.

XVI.

Answering the 16th paragraph of said bill, these defendants admit that on the 14th day of March, A. D. 1912, said John S. Haggerty filed a supplemental petition with the said Michigan Railroad Commission complaining of a tariff of the Grand Trunk System known as "Supplement No. 4 to M. R. C. No. 236, issued March 5th, 1912, effective intrastate March 16th, 1912, and interstate April 8th, 1912," and alleging that the rates set forth in said tariff were unreasonable and exorbitant, and if put into effect would mean a great hardship to said Haggerty; that thereupon the said Michigan Railroad Commission made an order dated March 15th, 1912, a copy of which order is attached to said bill of complaint and marked Exhibit "F," and that by said order said Commission attempted to suspend the operation of said tariff to and until the 20th day of April, 1912.

Further answering said 16th paragraph of said bill, the defendant, the Michigan Railroad Commission, says that said order of March 15th, 1912, was erroneously directed to the Grand Trunk Western Railway Company and that said order has been cancelled by an order of the said Michigan Railroad

Commission dated the 14th day of May, A. D. 1912, a copy of said order being hereto attached and marked Exhibit "A" as hereinbefore stated in paragraph 14 of this answer.

Further answering said 16th paragraph of said bill, these defendants deny that said Michigan Railroad Commission is without authority to regulate or make any order with reference to the tracks claimed to be owned by said complainant in the City of Detroit, and deny that any laws passed by the State of Michigan authorizing said Commission to exercise any authority over said tracks are null and void and of no effect because of in contravention of the 14th Amendment to the Constitution of the United States.

Further answering said 16th paragraph of said bill, these defendants say as to the other matters therein contained they have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same, but leave complainant to its proof thereof.

XVII.

The defendants admit the allegations contained in the 17th paragraph of said bill.

XVIII.

Answering the 18th paragraph of said bill, the defendants admit that the tariff therein mentioned, entitled "Supplement No. 6 to M. R. C. No. 236" was issued as therein stated, and that under the terms of said tariff the team tracks of complainant were withdrawn from intracity and intrastate switching movements with certain exceptions as alleged in said 12th paragraph of said bill.

The defendants deny all the other allegations contained in said 18th paragraph of said bill.

XIX.

Answering the 19th paragraph of said bill, the defendant, the Michigan Railroad Commission, admits that it did, on the 10th day of April, A. D. 1912, suspend said last named tariff mentioned in paragraph 16 of said bill and entitled "Supplement No. 6 to M. R. C. No. 236," by an order made on said date, a copy of said order being attached hereto, marked Ex-

hibit "B," and made a part hereof with the same force and effect as if herein inserted.

Further answering said 19th paragraph, the defendant, the Michigan Railroad Commission admits that it intends to compel the said complainant to comply with the laws of the State of Michigan, insofar as the same require interchange of traffic in the City of Detroit and over the lines of railroads located in said City and claimed to be owned and operated by complainant.

XX.

Answering the 20th paragraph of said bill, the defendant, the Michigan Railroad Commission, admits that it intends to require complainant to continue such local switching and business as is required by the laws of the State of Michigan, and that it will require complainant to allow the use of its terminals to receive from, transfer for, or deliver cars to other carriers having terminals of their own within the corporate limits of Detroit, at junction points with such other carriers in local movements in said City, to or from complainant's hold or team tracks within said city insofar as the same are required by the laws of the State of Michigan.

Further answering the 20th paragraph of said bill the defendants deny all the other allegations contained therein.

XXI.

The defendants deny the allegations contained in the 21st paragraph of said bill.

XXI-a.

The defendants deny the allegations contained in the 22nd paragraph.

XXII.

Answering the 22nd paragraph of said bill, the defendants deny that to require complainant to allow the use of its terminal facilities, so-called, on any other condition than those demanded by complainant or to require complainant to allow the use of its team tracks to industries on its line within the corporate limits of said city to other carriers or require complainant to receive, handle or deliver cars within said city from such other carriers, or to receive such cars and deliver the same to its hold or team tracks, constitutes a taking of com-

plainant's property without due and just compensation and without due process of law in contravention of the 14th Amendment to the Constitution of the United States.

Further answering 22nd paragraph of said bill of complaint the defendants say as to the matters therein alleged as to the real and beneficial ownership of said complainant in said railroad properties in the City of Detroit, the defendants have no knowledge or information sufficient to constitute a belief, and therefore neither admit nor deny the same, but leave complainant to its proof thereof.

XXIII.

Answering the 23rd paragraph of said bill, the defendants admit that if said complainant shall refuse obedience to said order of said Commission dated April 10th, 1912 (Exhibit B), and if complainant refuses to comply with the laws of the State of Michigan requiring it to make interchange of local traffic, said Michigan Railroad Commission on behalf of said Commission and on behalf of the State of Michigan will institute proceedings under the statute of the State of Michigan against complainant to enforce said order of suspension and said laws of the State of Michigan.

Further answering said 23rd paragraph of said bill, the defendants state that they will not attempt to enforce against the complainant or any property owned and controlled by it the orders of said Commission dated February 6th, 1912, and March 15th, 1912, and directed to the Grand Trunk Western Railroad Company, but expressly aver that said orders have been cancelled by an order of the Commission as hereinbefore stated.

Further answering said 23rd paragraph of said bill, the defendants deny all the other allegations therein contained.

XIV.

Further answering the said bill of complaint, the defendants Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson, and Franz C. Kuhn say that they have no personal interest in the subject matter of said bill except as officers of and representing the State of Michigan.

The defendants deny that complainant is entitled to the relief or any part thereof in said bill of complaint demanded,

and ask to be dismissed with their costs in this behalf sustained.

Michigan Railroad Commission.
By C. L. Glasgow,
Chrm.

C. L. Glasgow,
G. W. Dickinson,
Lawton T. Hemans,
Franz C. Kuhn,

Franz C. Kuhn.
George S. Law.
Edward Waer.
Solicitors for Defendants, Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson.
George S. Law,
Edward Waer,
Solicitors for Defendant, Franz C. Kuhn.

State of Michigan, County of Ingham, ss.

Cassius L. Glasgow, being duly sworn, deposes and says that he is one of the defendants in the above entitled case, that he is a member of the Michigan Railroad Commission, that he has read the foregoing answer by him subscribed and know the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as these matters he believes it to be true.

C. L. Glasgow.

Subscribed and sworn to before me this 22nd day of May, A. D. 1912.

W. N. Sweeney,
Notary Public, Bay County, Michigan, Acting in Ingham County.
My commission expires 12, 20, 1915.

DEFENDANTS' EXHIBIT "A."

State of Michigan, Office of the Michigan Railroad Commission, ss.

I, Willard N. Sweeney, Secretary of the Michigan Railroad Commission, Do Hereby Certify, That I have compared the annexed copy of an order in re John S. Haggerty vs. The Grand Trunk Western Railway Company, with the original

Order D-461, recorded in Journal 4, and that it is a true and correct transcript therefrom, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Commission at Lansing, this 14th day of May, in the year of our Lord one thousand nine hundred twelve.

(Seal of Michigan Railroad Commission.)

Willard N. Sweeney,
Secretary, Michigan Railroad Commission.

STATE OF MICHIGAN.
BEFORE THE MICHIGAN RAILROAD COMMISSION.

At a session of the Michigan Railroad Commission held at its office in the City of Lansing on the 14th day of May, A. D. 1912.

Present: Hon. C. L. Glasgow, Chairman. Hon. Lawton T. Hemans, Commissioner.

D-461.

John S. Haggerty,
Complainant.

vs.

Grand Trunk Western Railway Company,
Defendant.

Whereas, it has come to the knowledge of the Michigan Railroad Commission that its orders dated February 6, 1912, and March 15, 1912, in the above entitled cause, were erroneously directed against said Grand Trunk Western Railway Company, because said Grand Trunk Western Railway Company does not own or operate any tracks in or near the City of Detroit;

It Is Hereby Ordered, That the said orders dated February 6, 1912, and March 15, 1912, be and the same are hereby cancelled.

C. L. Glasgow,
Chairman.
Lawton T. Hemans,
Commissioner.

DEFENDANTS' EXHIBIT "B."

State of Michigan, Office of the Michigan Railroad Commission, ss.

I, Willard N. Sweeney, Secretary of the Michigan Railroad Commission, Do Hereby Certify, That I have compared the annexed copy of order in the matter of the postponement of Supplement No. 6 to Grand Trunk M. R. C. Tariff No. 236 effective April 11th, 1912, applying on team track switching in the City of Detroit for a period of forty five days with the original order recorded in Journal 3 and that it is a true and correct transcript therefrom, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Commission, at Lansing, this fourteenth day of May in the year of our Lord one thousand nine hundred and twelve.

(Seal) Willard N. Sweeney,
Secretary Michigan Railroad Commission.

STATE OF MICHIGAN.

BEFORE THE MICHIGAN RAILROAD COMMISSION.

Session of the Michigan Railroad Commission held at its Offices in the City of Lansing on the 10th day of April A. D., 1912.

D-461.

In the matter of the postponement of Supplement No. 6 to Grand Trunk M. R. C. Tariff 236 effective April 11th, 1912 applying on team track switching in the City of Detroit for a period of 45 days.

It having come to the knowledge of the Michigan Railroad Commission that the Grand Trunk Railway Company has published a tariff known as Supplement No. 6 to M. R. C. 236 effective April 11th, 1912, the same applying on team track switching within the City of Detroit, said supplement cancelling team track switching on the Grand Trunk Railway in said City of Detroit, leaving no rates in effect, and the Com-

mission on its own initiative being desirous of investigating the reasonableness of the application of that part of said supplement as effects the team track switching hereinbefore mentioned:

Therefore, by virute of the authority vested in us by law, as shown in Section 10 of Act 139 of the Public Acts of 1911, It Is Hereby Ordered, that said Supplement No. 6 to Grand Trunk M. R. C. Tariff No. 236 to become effective April 11, 1912 be and the same is hereby postponed until May 25th, 1912, in order that this Commission may have an opportunity to investigate the reasonableness of such Supplement as hereinbefore set forth.

C. L. Glasgow Chairman
G. W. Dickinson Commissioner
Lawton T. Hemans Commissiner.

AFFIDAVIT OF CASSIUS L. GLASGOW ON BEHALF OF DEFENDANTS.

(Filed June 1st, 1912.)

UNITED STATES OF AMERICA.

THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION. IN EQUITY.

Detroit, Grand Haven & Milwaukee Railroad Company, a corporation,

Complainant,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn,

Defendants.

State of Michigan, County of Ingham, ss.

Cassius L. Glasgow, being duly sworn, deposes and says:

That he is Chairman and a member of the Michigan Railroad Commission, and is familiar with freight transportation and the transportation problems in the City of Detroit; that on or about the 20th and 21st days of May, 1912, he investigated freight conditions in said city to ascertain the cause of present congestion of freight traffic; that he has

talked with numerous business men and manufacturers directly interested in freight transportation in the City of Detroit; and that he has by other means familiarized himself with freight transportation and freight problems, and has investigated the causes of present freight congestion of said city.

That he is familiar with and has knowledge of the conditions existing on the tracks of carriers in the City of Detroit during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic, and the transportation of cars from junction points in said city to the destinations to which they are consigned, as carried on within the last year pursuant to the requirements of subdivision d of section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; and that such interchange of traffic did not in any way tend to congest or impede traffic on the tracks of said railroads in the City of Detroit, including the lines of the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company, and in no way affected interstate and intrastate business except to facilitate the same and to relieve congestion thereof on the tracks of the various railroads in the City of Detroit.

Deponent further says that a compliance upon the part of the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company with the requirements of subdivision d of section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will not overtax the capacity of the tracks of said companies in the City of Detroit, and will not cause congestion of traffic on said tracks and will not interfere with interstate traffic but will facilitate such traffic; and that compliance on the part of said Grand Trunk Railway Company of Canada and said Detroit, Grand Haven and Milwaukee Railroad Company with the requirements of said statute will not cause any interference with the handling of passengers or the United States mails by said companies; and that such passenger traffic and such mail carriage will in no way be interferred with or delayed.

Deponent further says that during the past year, while railroad companies operating in the City of Detroit including the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company were complying with the requirements of said subdivision d of section 7 of Act No. 139 of the Public Acts of 1911, and were interchanging carload traffic as therein required, no complaints were received by the Michigan Railroad Commission from any

carrier in said city relative to congestion of traffic caused by such interchange of traffic, and no complaints were received by said Commission from any source that such interchange of traffic was causing congestion of freight traffic or interference with or delay in passenger traffic or with the United States mails; and that no application was made to said Commission by any of said carriers asking for relief under the railroad act of the State of Michigan from congestion of traffic caused by such interchange.

Cassius L. Glasgow.

Subscribed and sworn to before me this 31st day of May, A. D. 1912.

(Seal) Willard N. Sweeney,

Notary Public Bay County, Michigan, acting in Ingham Co.

My commission expires Dec. 20, 1915.

AFFIDAVIT OF GEORGE W. GULLIFORD IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5476.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

George W. Gulliford, being duly sworn, deposes and says, that he is Chief Clerk at Milwaukee Junction (Detroit), of the Detroit, Grand Haven & Milwaukee Railway Company, complainant in the above named suit; and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit, during the past year, and is familiar with the effect of the requirement of local or intra-

city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant and from such team tracks to other team tracks, industries within junction points within said city, and from industries within said city to complaint's team tracks, all as carried on within the last year pursuant to the requirements of subdivsion "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

Subscribed and sworn to before me this 17th day of June, A. D. 1912.

(Signed) George W. Gulliford.

(Seal)

(Signed) D. R. Hammond,

Notary Public in and for Wayne County, Michigan.

My commission expires July 6th, 1915.

AFFIDAVIT OF LAWRENCE H. NOLAN IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5476.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

Lawrence H. Nolan being duly sworn, deposes and says, that he is Superintendent of Terminals at Detroit, of the Detroit, Grand Haven & Milwaukee Railway Company, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit, during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks; all as carried on within the last year pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company, in the City of Detroit, and affected and delayed both interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of the said Act No. 139 of the Public Acts

of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate, but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminal which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent saveth not.

(Signed) Lawrence H. Nolan.

Subscribed and sworn to before this 12th day of June, A. D. 1912.

(Signed) William MacBean,

(Seal)

Notary Public in and for Wayne County, Michigan.

My commission expires 20th Decr., 1914.

AFFIDAVIT OF GORDON O'DAY IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5476.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

Gordon O'Day, being duly sworn, deposes and says, that he is Car Distributor at Detroit of the Detroit, Grand Haven & Milwaukee Railway Company, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit, during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911,

requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) G. O'Day.

Subscribed and sworn to before me this 14th day of June, A. D. 1912.

(Signed) William MacBean,

Notary Public in and for Wayne County, Michigan.

(Seal)

My commission expires 20th Dec., 1914.

AFFIDAVIT OF HENRY BRAMLEY IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5476.

Detroit, Grand Haven & Milwaukee Railway Company

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

Henry Bramley, being duly sworn, deposes and says, that he is Chief Clerk at West Detroit Station of the Detroit, Grand Haven & Milwaukee Railway Company, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit, during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilities of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company, in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d"

of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) Henry Bramley.

Subscribed and sworn to before me this 11th day of June, A. D. 1912.

(Signed) Joseph W. Lougheed.

Notary Public in and for Wayne County, Michigan.

My commission expires 3/4/14.

AFFIDAVIT OF JOHN C. McFADZEAN IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed July 3, 1912.)

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DIVISION.

No. 5476.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission et al.

State of Michigan, County of Wayne, ss.

John C. McFadzean being duly sworn, deposes and says, that he is agent at Detroit, Grand Haven & Milwaukee Railway Company, complainant in the above named suit, and is familiar with freight transportation and the transportation problems in the City of Detroit; that he is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city to the team tracks and other terminal facilties of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks; all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; that such traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d"

of Section 7 of the said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intra-city as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) John C. McFadzean.

Subscribed and sworn to before me this 12th day of June, A. D. 1912.

(Signed) William MacBean.

(Seal)

Notary Public in and for Wayne County, Michigan.

My commission expires 20th Dec., 1914.

OPINION ON APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed Aug. 5th, 1912.)

THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

IN EQUITY.

No. 5471.
No. 5476.

Grand Trunk Railway Company of Canada,
Complainant,

vs.

Michigan Railroad Commission et al.,
Defendants,

and

Detroit, Grand Haven & Milwaukee Railway Company,
Complainant,

vs.

Michigan Railroad Commission et al.,
Defendants.

Before Knappen and Denison, Circuit Judges, and Sater, District Judge.

PER CURIAM.

The Grand Trunk Railway Company of Canada and the Detroit, Grand Haven & Milwaukee Railway Company filed each its separate bill to restrain the Michigan Railroad Commission and the Attorney General of that State from enforcing certain orders of the Commission made under the authority of the Michigan Railroad Commission Act (being Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 130 P. A. Mich. 1911), relating to the intra-city transportation of carload freight between complainants' terminal tracks and their junctions with other roads, and to restrain the enforcement of any penalties or remedies provided for the viola-

tion of the orders of the Commission or of the Acts of the State of Michigan in question. Applications for interlocutory injunctions were heard under Sec. 266 of the New Judicial Code.

Complainants contend that the statute and orders of the Commission in question are unconstitutional and void, first, as denying the equal protection of the laws, in violation of the 14th amendment to the federal constitution, and, second, as contravening the commerce clause of that constitution. These objections present the larger questions in the case. Other objections, addressed to the validity of the statute and of the proceedings involved, will be stated later.

The purpose of the Commission Act, as indicated by its title, is "to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, ensure adequate service, create the Michigan Railroad Commission, define the duties and powers thereof, and to prescribe penalties for violation hereof."

The term "railroad," as used in the act, is declared to include all railroads, whether operated by steam, electric or other motive power, except logging or other private railroads not doing business as common carriers, and street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of 5 miles of the boundaries thereof. The provisions of the act are made applicable "to the transportation of passengers and property between points within this State, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing and mileage charges."

By section 7 of the original act, the railroads subject to its provisions are required to "afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith," and to "transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line" without discrimination in rates and charges between such connecting lines

Any person delivering property for transportation is given the right of routing shipments, and of prescribing over what

connecting line transportation shall be made; and it is declared to be the duty of the initial carrier to observe the direction of such shipper, and in case such direction is not given "to so route the freight as to give the property the benefit of the lowest rate published between points of origin and destination." By the same section the Commission is empowered, upon application, to require steam railroads and interurban and suburban railways to interchange cars, carload shipments, less than carload shipments, and passenger traffic "where it is practicable and the same may be accomplished without endangering equipment, tracks or appliances of either party"; and to require the construction of physical connections upon such terms as the Commission may determine. The same section provides that "every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks; Provided, such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded"; with the further proviso that "if the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said Commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the interests of the corporation or corporations and the public to be accommodated thereby." The award of the Commission is declared to be "binding upon the respective corporations interested therein until the same shall have been revised."

By sections 22 and following, provision is made for hearing by the Commission of complaints of unreasonable or unjustly discriminatory rates (joint or otherwise), regulations or practices, and for the fixing of maximum rates, and for setting aside unreasonable or discriminatory regulations, practices and services, and the substitution of proper action in lieu thereof.

By sections 26 and following, provision is made for action in chancery against the Commission by any common carrier or other party in interest who may be dissatisfied with any order of the Commission of the nature of that above referred to, and the court is empowered "to affirm, vacate or set aside the order of the Commission in whole or in part, and to make such further order or decree as the courts shall decide to be in accordance with the facts and the law." Either party is

given the right of appeal to the Supreme Court of the State; and in all actions under this provision the burden is upon the complainant "to show by clear and satisfactory evidence that the order of the Commission complained of is unlawful or unreasonable, as the case may be."

By the Amendment of 1911 a new subdivision was added to Sec. 7, as follows:

"(d) Every common carrier operating within this State shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line, when required so to do: Provided, that when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

After the taking effect of the amendment of 1911, and on July 29, the Grand Trunk Railway System filed its tariff (effective September 1, 1911), covering so-called switching charges within the switching or corporate limits of the City of Detroit, prescribing a charge of $5.00 per car for switching carload traffic from one to another industry having private sidings, or from one "hold" or team track to another "hold" or team track of the Grand Trunk Railway System, and imposing an additional charge of $3.00 per car in case of team track deliveries for the unloading of shipments received from or loading of shipments delivered to other carriers. Upon complaint of a shipper made against "The Grand Trunk Western Railway Company," the Commission, after hearing, held

that the charging of a greater rate for the movement of a carload shipment from a junction point with a connecting road to a team track on the Grand Trunk Western road than as charged for a like shipment from an industry to a team track upon the same line is an undue and unjust discrimination; and the Railway Company was ordered to make and file a tariff removing such discrimination and making "like charges for the movement of a carload shipment when received from an industry within the City of Detroit, upon the said Grand Trunk Western Railway, consigned for delivery upon team track or other siding of said road within the same city, and for a like shipment received by said Grand Trunk Western Railway from a connecting carrier at a junction point within the corporate limits of the City of Detroit, consigned to team track or other siding upon said road within the same city."

The Grand Trunk System thereupon published a new tariff, removing the discrimination by raising to $8.00 the charge for movement of cars between team tracks and between industrial tracks and team tracks located on the Grand Trunk lines. Upon further complaint that the new tariff was unreasonable and exorbitant, the Commission, on March 15, 1912, ordered the postponement of the effective date of the new tariff until April 29, to give the Commission opportunity to investigate the reasonableness of the proposed rate. Thereupon the Grand Trunk System issued a supplement to its tariff suspending the intrastate rates named in the tariff last referred to, and, on March 30, published its new tariff, cancelling all rates between industries having private sidings on the Grand Trunk System and hold or team tracks on that system, and all rates between junction points with other carriers within the corporate limits of Detroit. The Grand Trunk team tracks were thereby withdrawn from all intra-city, intrastate and interstate switching movements, except as to the Detroit & Toledo Shore Line, with which it was under contract for terminal switching. On April 10th the Commission suspended the last named tariff-supplement until May 25, 1912 to give the Commission opportunity to investigate its reasonableness. On April 12, two days after the making of the Commission's order suspending the tariff of the Grand Trunk System cancelling team track switching, the Grand Trunk Railway of Canada filed its bill in this cause, and on April 27th filed an amended bill. On the latter date the Detroit, Grand Haven & Milwaukee Railway Company filed its bill. A temporary restraining order was made in each case and is still in force.

Complainants and defendants seem to agree that the statutes in question should be interpreted as requiring complainants to receive and transport, at reasonable rates, all intrastate carload traffic offered for transportation under the usual conditions and falling within either one of two classes; first, such as is locally consigned between points in the same city or town, whether or not the same is received from another railroad; second, such as is offered at any junction or transfer point or intersection with another railroad within the city for delivery upon team tracks or sidings therein, whether or not the shipment originated within such city or town. Defendants' brief discusses the case with reference only to such two classes. It is not entirely clear whether complainants regard as included a third class, viz: such as is offered upon team tracks or sidings within a city for delivery to a junction or transfer point or intersection with another railroad therein, whether or not the ultimate destination of such shipment is beyond such city or town. We thus find it necessary to discuss the case with reference only to the first two classes of transportation.

1. The taking of complainants' property without due process is said to result because, as contended, the required services are merely switching services, as distinguished from transportation services. It is contended that intra-city switching is beyond any obligation of complainants, and cannot be imposed by the legislature; and that a carrier not incorporated particularly for such services cannot be required to allow another carrier the use of its terminals to do switching.

An imperative obligation resting upon railroads doing business within this state not only to furnish equal facilities for the transportation of passengers and freight to all railroads connecting therewith, but to make such track connections with connecting railroads as to permit the transfer from one to the other of loaded and unloaded cars designed for transportation upon both roads, has been too long imposed by statute and declared by the decisions of the courts to now permit of question. Such has been the settled policy of the State of Michigan for more than 30 years. By the amendment of 1879 (P. A. Mich. 1879, No. 207) to the General Railroad Act of 1873, express provision was made for compelling such union and connection of tracks under order of the Commissioner of Railroads. The Railroad Commission Act of 1873 (P. A. Mich. 1873, No. 79) contained the provision above quoted in this opinion as contained in the act of 1909, requiring railroads at reasonable times, and for reasonable compensation, to draw over their tracks the merchandise

and cars of any other corporation or individual having connecting tracks, with substantially the same provision for determination by the Commissioner of Railroads of the rate of compensation and the stated periods at which cars shall be so drawn, in case the respective railroads cannot agree thereon. Similar statutory provisions have existed ever since 1873.

In the year 1881, in a case in which a switchman sought to recover from a railroad company for injuries suffered in coupling freight cars received from another railroad, the Supreme Court of Michigan, speaking through Justice Cooley, said:

"The primary fact that must rule this controversy is that the Michigan Central Railroad Company is compelled to receive and transport over its road all the varieties of freight cars which are offered to it for the purpose and which are upon wheels adapted to its gauge. It is compelled to do so—first * * * But third, the statute requires it. It is provided by General Laws 1873, p. 99, that 'every corporation owning a road in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation.' The necessities of commerce require this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the State to punish could hardly fail to be speedy and effectual." Michigan Central R. R. Co. vs. Smithson, 45 Mich., 212, 221.

In Michigan Railroad Commission vs. Michigan Central R. R. Co. (1911), 132 N. W. 1068, the Supreme Court of Michigan held valid and enforceable a provision of the Michigan Railroad Commission Act of 1907 similar to that contained in the 1909 Act before the amendment of 1911, empowering the Railroad Commission to require railroads to interchange cars, freight and passenger traffic, and to require track connection upon such terms as it may determine, and sustained the order of the Commission requiring such connection and interchange of traffic between a steam railroad and an electric interurban road. That requirements of track connections and interchange of traffic between railroads, imposed by the Michigan statutes previous to 1911, do not amount to the taking of property without due process needs no extended reference to authority. Mich. Railroad Commission vs. Mich. Central R. R. Co., supra; Wisconsin Etc. Ry. Co. vs. Jacobson, 179 U. S., 287; Minneapolis & St. Louis R. R. Co. vs. Minnesota, 186 U. S., 263.

If, therefore, the requirement of the services here in question offends against the due process clause of the constitution, it must be because such required services are not in a proper sense transportation, but are essentially distinguishable therefrom.

The nature and classification of this service may best be appreciated by considering the conditions to which it is sought to apply the orders of the Commission here in question. Detroit is a city of about 500,000 population. It has a large number of industries and is served by a large number of railroads. For the purpose of facilitating the loading and unloading of freight each of these railroads has established a greater or less number of team or "hold" tracks, and many of these industries are provided with sidings. These "hold" tracks, team tracks and industrial sidings are within what are called the switching limits of Detroit. It is stated in defendants' brief, and without contradiction, that the so-called switching district of Detroit extends for a distance of about 22 miles. Such tracks are necessary to prevent the congestion which would result from requiring all carload freight, both in and out, to be delivered at the freight depots of the respective roads, and in a very proper sense are shipping stations. In Railroad Commission vs. St. L. I. M. & S. Ry. Co., 24 I. C. C. Rep. at p. 294, it was said of team tracks: "They are analogous to freight depots in that they bear the same relation to carload freight that such depots bear to less than carload freight."

By Section 6 of the Railroad Commission Act of 1909, switching connections with private sidetracks are required. By Section 13a the requirement is made of suitable freight depots, buildings, switches and sidetracks; and the Commission is empowered to make such orders requiring the same, including "other track accommodations," as it is deemed for the public interest and as shall be just and reasonable.

Setting to one side the question of the requirement of interchange of traffic between connecting roads, the statute, in our opinion, validly empowers the Commission to require local transportation by a railroad between its own shipping stations within a city, whether such plurality of shipping stations has been voluntarily established by the railroad, as here, or has been required by the Commission under its lawful powers, and provided such transportation is for such substantial distance and of such a character as reasonably to require a railroad haul, as distinguished from other means of carriage. It is also clear that a statute validly may, and that the statutes we

are considering do authorize the employment of such depots, sidetracks, and team tracks of a railroad for transporting carload freight to or from the junction of such road with another road as a substantial part of a continuous transportation routing, where such junction is outside the city limits. Does the fact that such junction is within the city limits necessarily differentiate the two classes of services so as to make the one a transportation within the meaning of the law and the other a mere switching service? And this in view of the fact that the distances between the city depots and tracks of a railroad and its intracity junction with another road may be as great as between such city depots and tracks and junctions outside the city, or as great as the average distance between extracity freight stations in a fairly populous section. Or does the fact that such freight movement begins and ends within the limits of a city necessarily characterize its movement between junction point and the station of receipt or delivery as a switching transaction rather than as part of an actual transportation between two termini; that is to say, between the place where the movement begins and the place where the movement ends? Upon principle, there seems no necessary distinction with respect to either of the two cases suggested. In either case the shipper is not necessarily doing more than exercising the right of routing shipments between point of shipment and point of delivery. The cases relied upon by complainants are not, in our judgment, decisive of the question here presented. In Stockyards Co. vs. Louisville & Nashville Ry. Co., 192 U. S. 568, it was held that neither the interstate commerce act of 1887 nor the provisions of the Kentucky constitution which required railroad companies to receive, deliver, transfer and transport freight from and to any point where there is a physical connection between the tracks, imposed an obligation upon a railroad having its own city stockyards, under a lease from a stockyards company, to accept live-stock from other states for delivery at the stockyards of another railroad in the same neighborhood, although there is physical connection between the two roads. That case differs from the one before us in these respects: There was in that case no statute in terms requiring the transfer in question; the constitutional provision was construed as referring to a case where the freight was destined to some further point by transportation over a connecting line. The statute before us permits no such construction. It is true that in the stockyards case it was said of the constitutional provision referred to that—"It cannot be intended to sanction a snatch-

ing of the freight from the transporting company at the moment and for the purpose of delivery. It seems to us that this would be so unreasonable an interpretation of the section that we do not find it necessary to consider whether under any interpretation it can be sustained." But the basis of the decision seems to be that there was neither requirement of public law nor of private contract that the railroad company should deliver its own cars to another road, and that delivery would accordingly have to be made either by unloading or by the surrender of the defendant's cars; and that the courts have no authority to dictate a contract to the defendant or to require it to make one. This objection again does not pertain to the case before us. The case was treated "as an ordinary case of stations at substantially the same point of delivery, and, therefore, as one to be dealt with as if they were side by side." The court, moreover, said—"It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might be regarded as bona fide further transportation over a connecting road and within the requirements of the Kentucky constitution."

In Louisville & Nashville Ry. Co. vs. West Coast Etc. Co., 198 U. S. 483, it was held that a common carrier may agree with such other carrier as it may choose to forward beyond its own line goods it has transported to its terminus; and if it has adequate terminal facilities at a seaport sufficient for all freight destined for that place, it is not obliged to allow other and competing carriers to load and discharge at a wharf owned by it and erected for facilitating the transportation of through freight to points beyond that place. This case differs from the instant case in these respects: It involved a wharf which was held in a proper sense to be private, and it was said that the defendant "never became a common carrier, as to this wharf, in the sense that it was bound to accord to the public or to plaintiff a right to use it upon payment of compensation." It was further said that the wharf was 'not in strictness the terminus of defendant for unloading its goods." The objection urged in that case that the commerce of the country would be cramped, if not damaged, by the uncertainty of finding quarters for the prompt loading and unloading of vessels, is guarded against in the Michigan statute by the provision authorizing the Commission to determine the rate of compensation and to fix the periods at which cars should be drawn, and by the provision contained in the proviso of section 7d for guarding against congestion.

The case of Louisville & Nashville Ry. C. vs. Stock Yards Co., 212 U. S., 132, was similar to the case referred to as reported in 192 U. S., 568. In the case reported in the 212th United States the same condition existed as in the case earlier referred to, in that there was no statute providing machinery for carrying out the provisions of the Kentucky constitution; and it was held that in order to deliver as demanded the railway "would have been compelled either to build chutes or to hand over its cars to the Southern Railway"; and that in the absence of statute or contract there was no power to compel such action. The court again expressly refrained from saying that a valid law could not be passed requiring the delivery by a railroad of its cars to another railroad. The attempt was made in that case to compel the use of the railway terminals "upon simply paying for the service of carriage," a condition which does not exist here. The action was also construed as an attempt to compel the railroads to deliver cars elsewhere than at its own terminals, while in the case before us delivery is attempted to be enforced only at places which the railroad company holds are parts of its terminal facilities. All three of the cases referred to arose previous to the 1906 amendment of the Interstate Commerce Act providing for compulsory through routing and rating.

In Railroad Commission vs. St. L. I. M. & S. Ry. Co. supra, it was held by the Interstate Commerce Commission that a railroad was not required to switch a car containing an interstate shipment of coal from another line connection in the city of its delivery to its own team track for unloading by the consignee, there having been no tariff charge provided therefor; but that such switching could be required between connections with other lines and industries located on defendant's tracks, as to which last service a tariff charge was provided. In the opinion it is said (p. 295): "Switching to an industrial track is a service for which a regular tariff charge is frequently made by carriers and is over tracks and spurs as to which the cost of construction is generally borne in part by owners of the plants to which they extend. Team-track delivery is a service rendered by carriers in receiving and delivering carload freight in connection with their own line business and is over tracks owned by the carriers. It is a service for which no separate tariff charge is provided and which is analogous to freight-depot service for less-than-carload freight. A freight depot owned and maintained by a carrier is a terminal facility for use in handling business from its own line and can not, under sec-

tion 3 of the statute, be used for handling business from other lines without its consent."

It will be noted that this decision is based upon two propositions, first, that the statute does not provide for the service, and, second, that no separate tariff charge is provided. The first ground assigned does not apply in the instant case, because the statute expressly requires it. We see no reason why the Commission cannot, under the Michigan statute, require a tariff charge for such service in connection with, and as part of, transportation by way of through routing.

We find nothing in the propositions decided in United States vs. Terminal Railroad Association (32 Sup. Ct. Rep., 507) or in State vs. Terminal Railroad Association (182 Mo. 284) opposed to the validity of the legislation we are considering. The case of Chicago, I. & L. Ry. C. vs. Railroad Commission (95 N. E., 364) decided by the Supreme Court of Indiana, sustaining a statute in many respects similar to that before us, is well in point upon the question of due process, as well as upon certain of the other questions here involved.

The section of the Michigan statute here involved relates by its terms to transportation, and the defendants seek to sustain the validity of the statute with respect to the services in question upon the sole ground that they do in fact constitute transportation. While we do not say that there may not be cases distinctively of switching or team track delivery which do not amount to transportation, in our opinion, a service calling for the use of the so-called terminal facilities of a connecting railroad does not lose what would otherwise be the quality of transportation from the mere facts either that the movement begins and ends within the switching or corporate limits of a city, or that the transportation is only between an intra-city junction and team track or sidetrack. Whether a given service is delivery as incidental to and as a part of a transportation in which the delivering carrier has substantially participated, or is a delivery incidental only to a "transportation" which has been wholly performed by another carrier, is, at the last, a question of fact, to be determined in the given case as it may arise.

The conclusion we reach is that the imposing upon complainants of the duty of transportation prescribed by the statute, as we have interpreted it, is not sufficient to constitute a taking of complainants' property without due process of law. Questions relating to quality and reasonableness of service, and compensation therefor, are primarily addressed to the Commis-

sion, subject to the statutory authority of revision conferred by the Act upon the State courts. No case of threatened abuse of its powers on the part of the Commission is presented.

But it is urged, and the ex parte affiadvits of complainants' representatives tend to show, that the performance of the class of services in question would tend to congest complainants presently existing terminals; and thus interfere with the proper handling of the traffic; that during the period in which such services were furnished more or less congestion did result; that sufficient vacant land cannot be acquired for the necessary enlargement of such terminals; and that to acquire lands now occupied would cost several hundred thousand dollars. So far as concerns the expense of enlarging and extending complainants track facilities, it would seem that if complainants could otherwise lawfully be required to provide the service in question, such obligation could not be avoided because attended with considerable expense. As respects temporary congestion pending such extension of facilities, we would not be warranted, upon ex parte affidavits, in enjoining the enforcement of the statute, especially in view of the powers given the Commission toward preventing congestion, and in view of the fact that the service seems not to have been discontinued by reason of such congestion, but immediately because of the controversy over rates.

2. The alleged violation of the commerce clause of the federal constitution rests upon the argument that the enforcement of the statute and the orders referred to will necessarily result in congesting the terminal facilities of complainants, and thus make it impossible for them to carry on interstate business without seriously delaying and interfering with such commerce. The statute does not embrace interstate commerce. It is confined to intrastate business. It has been so construed by the Supreme Court of Michigan. Mich. Central R. R. Co. vs. Michigan Railroad Commission, supra. The statute cannot be said to interfere with interstate commerce unless such is its direct, immediate and necessary effect. Louisville & Nashville R. R. Co. vs. Kentucky, 161 U. S., 677, 701; Louisville & Nashville R. R. Co. vs. Kentucky, 183 U. S., 503, 518. It is not, and cannot be claimed that such effect results as matter of law, that is to say, it can only result because and when it is established by proofs that such is in fact the direct and necessary result of the enforcement of the act and the orders of the Commission. What has already been said respecting the congestion of complainants existing terminals, in considering the question

of due process, is equally pertinent to the objection of interference with interstate commerce.

3. The statute is assailed as unconstitutional on its face, as denying the equal protection of the law because imposing, as alleged, such severe penalties for disobedience of its provisions as to deter parties affected thereby from testing its validity in the courts. Ex parte Young, 209 U. S., 123, is relied upon to support this contention. But without regard to the question whether the penalties provided by this statute are so excessive as to be void, it is sufficient to say that we have not before us an action for the recovery of penalties; that the penalties are embraced in a section by themselves, and thus plainly separable from the provisions here involved; and the question of the constitutionality of the penalty clause may properly be left to be determined should an effort be made to enforce the same. Wilcox vs. Consolidated Gas Co., 212 U. S. 19, 53-54; United States vs. Delaware & Hudson Co., 213 U. S., 366, 417; Grenada Lumber Co. vs. Mississippi, 217 U. S., 433, 443.

4. Subdivision "a" of section 7 of the statute declares that "nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

It is urged that to require a carrier to receive or transport over its tracks the merchandise and cars of any other corporation or individual having connecting tracks is to require it to give the use of its tracks and terminal facilities to another railroad engaged in like business, and that the act is thus so inconsistent and uncertain as to be utterly null and void. We think the two provisions in question can be so construed as to give effect to both.

The provisions in subdivision "a" above referred to was contained in the Act of 1907, construed by the Supreme Court of Michigan Central R. R. Co. vs. Michigan Railroad Commission, supra, in which case (although the provision in question in subdivision "a" was not referred to in the opinion) the court upheld the provision requiring interchange of traffic and track connections, including the transporting of cars from another railroad. Moreover, subdivision "d" was enacted by way of amendment subsequent to the original adoption of subdivision "a." If either provision were required to give way, it would seem that the later would prevail.

5. The orders entered by the Commission are denounced as void because made in proceedings to which complainants

were not parties. Neither complainant is made a party to the proceedings in which the orders of February 6th and March 15th were made, the only respondent being the "Grand Trunk Western Railway Company." But complainants need no injunction to restrain the enforcement of those orders. Such attempted enforcement could not harm them, for the action commanded by the order of February 6th has already been taken, and the tariff suspended by the order of March 15th has been cancelled. It is, moreover alleged in defendants' brief, and not denied, that both these orders were suspended by an order of the Commission of May 14th. The order of April 10th which suspended until May 25th the tariff of April 11th (which cancelled team track switching and left in effect no rates therefor), seems to have been made in the original proceeding to which neither complainants were formally made parties. All the tariffs in question were made by "Grand Trunk Railway System," to which System both complainants belong, and which System the bills allege may and does lawfully issue tariffs for the entire system, without the necessity of further action by the separate companies. The Grand Trunk Western Railway belongs to the Grand Trunk Railway System, but has no tracks in Detroit. The bills allege that in the proceedings mentioned the Grand Trunk Western Railway Company was impleaded as "Grand Trunk Railway Company." Whether under the facts stated complainants would be affected by orders in proceedings to which they were not separately made parties, and by name, we need not enquire, for we gather from the allegations of the bills that the Commission is not threatening to enforce its subsisting order of April 10th without making complainants parties to the proceedings in question; the allegation being that the Commission "gives out and threatens that it will make orator a party to said proceedings brought by said John S. Haggerty, and to said order entered therein (referring to order of April 10th), and to all proceedings under said suspension of said last named tariff," and that it will require complainants to continue local switching business and to allow the use of its terminals for the purposes herinbefore stated. Moreover, the order of April 10th simply postponed the tariff cancelling team track switching, to give the Commission an opportunity to investigate its reasonableness, and it does not appear that such further investigation has been had. In spite, therefore, of later allegation of threatened injurious action, we would not be justified in assuming that the Commission would attempt to or could

do anything to complainants' injury under the order of April 10th without further impleading, investigation and hearing.

It follows from what has been said that the application for interlocutory injunction should be denied, and the existing restraining order vacated. As the questions presented are important and review may be desired, the formal entry of the orders in accordance with this opinion will be withheld until September 5th next, to give complainants opportunity to present such applications as they may desire for a continuance of the restraining order pending appeal (under the rule stated in Hovey vs. McDonald, 109 U. S., 150, 161, and Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79, 80) in case such appeal is to be taken.

Approved:

Loyal E. Knappen,
Circuit Judge.

Arthur C. Denison,
Circuit Judge.

J. E. Sater,
District Judge.

ORDER AND STIPULATION ON MOTION FOR INTERLOCUTORY INJUNCTION.

(Filed September 17, 1912.)

THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

Grand Trunk Railway Company of Canada,
Complainant,
vs. No. 5471.

Michigan Railroad Commission, et al.,
Defendants.

and

Detroit, Grand Haven & Milwaukee Railway Company,
Complainant,
vs. No. 5476.

Michigan Railroad Commission, et al.,
Defendants.

These causes coming on to be heard after due notice according to law, upon the application of each of the complainants for an interlocutory injunction herein, and for a continuance of the restraining order heretofore granted in these causes and the court having considered the pleadings in these causes and the affidavits and exhibits filed by the respective parties in these causes and having heard the arguments of counsel and being fully advised in the premises, it is ordered, adjudged and decreed by the court that the said motions for said interlocutory injunction and for a continuance of the restraining orders heretofore entered herein, be and the same are hereby denied, and it is ordered that for the purposes of an appeal to the Supreme Court of the United States of said causes from this order, that said causes be and are hereby consolidated and upon motion of complainants an appeal is allowed from said orders denying said motions for said interlocutory injunctions and for a continuance of said restraining orders to the Supreme Court of the United States upon said complainants, within ten days from

this date, filing their appeal bond herein, conditioned according to law, in the penal sum of $100,000.00 and the temporary restraining orders heretofore issued in these causes are continued in force pending said appeal, and leave is also given complainants to file their certificates of evidence herein within thirty days from this date.

Loyal E. Knappan,
Circuit Judge.
Arthur C. Denison,
Circuit Judge.
J. E. Sater,
District Judge.

It is hereby stipulated by and between the parties of the above entitled causes by their respective solicitors that the above order be entered therein on condition that the appeal of said causes to the Supreme Court of the United States be perfected so that these causes will be placed on the docket of the coming October Term of said Supreme Court, this stipulation being entered into because of the necessity for a final determination of said causes at the earliest possible date.

Dated Aug. 31st, 1912.

L. C. Stanley,
Kretzinger & Kretzinger,
Solicitors for Complainants.
Franz C. Kuhn,
Solicitor for Defendants.
George S. Law,
Edward Waer,
Of Counsel for Defendants.

PETITION OF G. T. RY. CO. FOR APPEAL.

(Filed September 17, 1912.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

No. 5471.

Grand Trunk Railway Company of Canada,
Complainant,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, Attorney General of the State of Michigan,
Defendants.

To the Honorable The District Court of the United States, for said Eastern District of Michigan:

Now comes the said complainant by G. W. Kretzinger, Jr., and says that it is aggrieved by the judgment of this Honorable Court entered this 17th day of September, 1912, in said cause, in and by which the Preliminary or Interlocutory injunction prayed for in the bill was denied.

And complainant claims an appeal therefrom, and prays that the same may be allowed by an order of this Honorable Court, and that the record may be duly certified, and forwarded to the said United States Supreme Court in order to perfect said appeal.

The Grand Trunk Railway Company of Canada,
George W. Kretzinger
George W. Kretzinger, Jr.,
L. C. Stanley,
Its Solicitors.

PETITION OF D. G. H & M. RY. CO. FOR APPEAL.

(Filed September 17, 1912.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

IN EQUITY.

No. 5476.

Detroit, Grand Haven & Milwaukee Railway Company,
Complainant,

vs.

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, Attorney General of the State of Michigan,
Defendants.

To the Honorable the District Court of the United States, for said Eastern District of Michigan:

Now, comes the said complainant by G. W Kretzinger, Jr., and says that it is aggrieved by the judgment of this Honorable Court entered this 17th day of September, 1912 in said cause, in and by which the preliminary or interlocutory injunction prayed for in the bill was denied.

And complainant claims an appeal therefrom, and prays that the same may be allowed by an order of this Honorable Court, and that the record may be duly certified, and forwarded to the said United States Supreme Court in order to perfect said appeal.

The Detroit, Grand Haven & Milwaukee Railway Company.

George W. Kretzinger,
George W. Kretzinger, Jr.,
L. C. Stanley,
Its Solicitors.

ASSIGNMENT OF ERRORS.

(Filed September 17, 1912.)

IN THE SUPREME COURT OF THE UNITED STATES.
To the October Term, 1912.

CONSOLIDATED CAUSES NOS. 5471 & 5476. IN EQUITY.

Grand Trunk Railway Company of Canada,

vs.

Michigan Railroad Commission, et al.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission, et al.

Appeal from District Court of the United States for the Eastern District of Michigan, Southern Division.

Now comes the Grand Trunk Railway Company of Canada and Detroit, Grand Haven & Milwaukee Railway Company, complainants in the above causes as consolidated, and say that there is manifest error on the face of the record in this, to-wit:

1. The court erred in denying the motion of the complainants for an interlocutory injunction in the above entitled causes as consolidated, as prayed for in said bills of complaint, as amended.

2. The court erred in denying the motion of complainants for a continuance of the restraining orders heretofore entered in the above entitled causes as consolidated.

Wherefore complainants pray that the interlocutory decree aforesaid be reversed by reason of the foregoing errors and that they may be restored to all things which they may have lost by reason of said interlocutory decree.

Kretzinger & Kretzinger,
L. C. Stanley,
Solicitors for Complainants.

ORDER ALLOWING APPEAL.

At a Session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court Room in the City of Detroit, in said District on Tuesday the Seventeenth day of September in the year of our Lord one thousand nine hundred and twelve.

Present: The Honorable Arthur J. Tuttle, District Judge.

Grand Trunk Railway Company of Canada,
Complainant,

vs. No. 5471

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, Attorney General of the State of Michigan,
Defendants.

and

Detroit, Grand Haven & Milwaukee Railway Company,
Complainant,

vs. No. 5476

Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, Attorney General of the State of Michigan,
Defendants.

Upon the application of Solicitors for Complainants, it is by the court now here ordered that the above entitled causes be and they are hereby consolidated for the purpose of appeal.

And, on reading and filing in the above entitled causes petitions for appeal to the Supreme Court of the United States, and it appearing to the court that the complainants have filed their Assignments of Error as required by the rules of the Supreme Court of the United States, it is

Ordered that appeals be and the same are hereby allowed as prayed for, and the amount of the bond on said consoli-

dated appeals, be and the same is hereby fixed at the sum of One Hundred Thousand Dollars ($100,000.00).

Arthur J. Tuttle,
District Judge.

CITATION.

SUPREME COURT OF THE UNITED STATES.

United States of America, ss.

To Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, Attorney General of the State of Michigan.

Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, on the* 16th day of October next, pursuant to an Appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Michigan, wherein Grand Trunk Railway Company of Canada and Detroit, Grand Haven & Milwaukee Railway Company, are appellants and you are appellees to show cause, if any there be, why the Decree rendered against the said appellants in the said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the United States, this 17th day of September, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States of America the one hundred and thirty-seventh.

Arthur J. Tuttle,
District Judge.

*Not exceeding 30 days from the day of signing.

Service of the within citation is hereby accepted.

Roger I. Wykes,
Attorney General.
Edward Waer,
Assistant Attorney General,
Solicitors for Defendants.

BOND ON APPEAL.

(Filed September 21, 1912.)

Know All Men by These Presents, That we, The Grand Trunk Railway Company of Canada, a corporation of the Dominion of Canada, and Detroit, Grand Haven & Milwaukee Railway Company, a corporation of the State of Michigan, as principals, and National Surety Company of New York, and the Fidelity & Deposit Company of Maryland, corporations as sureties, are held and firmly bound unto the Michigan Railroad Commission, a corporation, and Cassius L. Glasgow, Lawton T. Hemans and George W. Dickinson and to the Attorney General of the State of Michigan, in the penal sum of one hundred thousand dollars ($100,000) lawful money of the United States for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly, severally and firmly by these presents.

Witness our hands and seals this 18th day of September, A. D. 1912.

The Condition of the Above Obligation is Such that whereas the said Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson and Franz C. Kuhn, the Attorney General of Michigan, did on the 17th day of September, 1912, in the District Court of the United States for the Eastern District of Michigan, Southern Division thereof, obtain an order or decree against the above bounden Grand Trunk Railway Company of Canada and the Detroit, Grand Haven & Milwaukee Railway Company, denying the application of said railway companies for an interlocutory injunction as prayed for in said bills of complaint, from which said order of the said District Court of the United States for the Eastern District of Michigan, Southern Division thereof, the said railway companies prayed for and obtained an appeal to the Supreme Court of the United States.

Now, therefore, the condition of this obligation is such that if appellants shall prosecute their said appeal, and shall pay all costs awarded against them and shall perform and abide by the final order and judgment of said Supreme Court of the United States and in the event of a final decision by said court adverse to said complainants, then if said com-

plainants shall pay all damages which it may be legally determined that said appellants must lawfully pay to any shipper by reason of the omission of said appellants during the pendency of this appeal to perform any services the requirement of the performance of which is sought to be enjoined in the bills of complaint filed in this cause, and lawfully required by or under the Statutes of the State of Michigan from and after this date, and refused by said appellants by reason of the continuance of the stay order under the decree of this court denying the application of appellants for an interlocutory injunction, then this obligation to be void, otherwise to remain in full force and effect.

The Grand Trunk Railway Company of Canada,
(G. T. R. Co. Seal)
By E. J. Chamberlin, (Seal)
Its President.

Detroit, Grand Haven & Milwaukee Railway Company,
By E. J. Chamberlin, (Seal) (D., G. H. & M. Ry.
Its President. Co. Seal.)

National Surety Company of New York,
By George B. Gerkes, Its Resident Vice-President.
(National Surety Co. of N. Y. Seal) (Seal)
Thomas E. Griffin, Its Resident Assistant Secy.
(Seal)

Fidelity and Deposit Company of Maryland,
By Chas. Whitaker, (Seal)
Its Attorney in Fact.
(Fidelity & Deposit Co. of Md. Seal)
Attest:
S. P. Nute, Agent.

STIPULATION NO. 1 AS TO CONTENTS OF RECORD ON APPEAL.

(Filed Oct. 7th, 1912.)

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

NOS. 5471 AND 5476 CONSOLIDATED.

Grand Trunk Railway Company of Canada,

vs.

Michigan Railroad Commission, et al.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Company, et al.

It is hereby stipulated by and between the parties to the above entitled causes as consolidated, by their solicitors, that the certificate of evidence for the appeal of the above entitled causes as consolidated to the Supreme Court of the United States, shall consist of the following evidence only:

1. All affidavits filed in support of the bills filed in each case, and the answers thereto, save only that where the affidavits are identical in terms it will suffice to have the body of the affidavit set forth with a statement of the names and occupations of the various affiants thereto, and the pleadings in support of which the various affidavits were filed. The affidavit of Cassius L. Glasgow filed on behalf of defendants, shall be printed in full.

2. Of Exhibit "C" in suit No. 5471, identical with Exhibit "B" in suit No. 5476, both being tariff M. R. C. No. 236, I. C. C. No 1428, only the following excerpts:

(a) Title page;

(b) The following portions of page 2: List of points at which rates and rules named apply, and list of abbreviations;

(c) The following portions of page 3: Rule 1 through and including Note 1 and Note 1-A;

(d) The following portions of page 4: Note 10;

(e) Pages 15 to 26 inclusive.

2-A. At this point there should be inserted the following or a similar statement showing of what the balance of Exhibit "C" (Suit 5471) consists:

"The remainder of Exhibit "C," Tariff M. R. C. No. 230, I. C. C. No. 1428, consists of tables of switching tariffs similar to the above except that they apply to other shipping points in Michigan, the same as the above tables apply to Detroit. It is not deemed essential that tables of switching tariffs relating to other cities be printed in full, and such tables are therefore omitted under stipulation of counsel for the respective parties."

3. Exhibit "E" in both suits, being Supplement No. 4 to said tariff, should be reprinted in full.

4. Exhibit "G" in both suits, being supplement No. 5 to said tariff, should be reprinted in full.

5. Exhibit "H" in both suits, being Supplement No. 6 to said tariff, should be reprinted in full.

5-A. Exhibits "A," "D" and "F" in suit 5471 being identical with Exhibits "A," "C" and "F" in suit 5476, should be reprinted in full.

6. Of Supplement No. 3 to said tariff, filed with Exhibit "C" in No. 5471 and "B" in 5476, the following portions:

(a) Title page;

(b) On page 2 only Note No. 10;

(c) Of page 3, the portion beginning near the middle of said page entitled: "Detroit, Milwaukee Jct. and West Detroit, Mich," to the bottom of said page.

Kretzinger & Kretzinger,
L. C. Stanley,
Solicitors for Complainants.
Roger I. Wykes, Atty. Gen'l.,
Edward Waer, Assist. Atty. Gen'l.,
Solicitors for Defendants.

STIPULATION NO. 2 AS TO CONTENTS OF RECORD ON APPEAL.

(Filed Oct. 7th, 1912.)

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

NOS. 5471 AND 5476 CONSOLIDATED.

Grand Trunk Railway Company of Canada,

vs.

Michigan Railroad Commission, et al.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission, et al.

It is hereby stipulated by and between the parties to the above entitled causes as consolidated, by their solicitors, that the record for the appeal to the Supreme Court of the United States shall not include any of the bills filed in either of said causes except the bill as last amended and filed in each cause. The record shall include the answer of the defendants in each case together with all exhibits thereto attached.

Kretzinger & Kretzinger,
L. C. Stanley,
Solicitors for Complainants.
Roger I. Wykes, Atty. Gen'l.,
Edward Waer, Assist. Atty. Gen'l.,
Solicitors for Defendants.

ORDER EXTENDING TIME MAKE RETURN TO CLAIM OF APPEAL.

At a Session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court Room in the City of Detroit, in said District, on Tuesday the Fifteenth day of October in the year of our Lord one thousand nine hundred and twelve.

Present: The Honorable Arthur J. Tuttle, District Judge.

Nos. 5471 and 5476 Consolidated.

Grand Trunk Railway Company of Canada,

vs.

Michigan Railroad Commission, et al.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission, et al.

In the above consolidated causes, upon the application of Elmer W. Voorheis, Clerk, and for cause shown, it is by the court now here ordered that the time to file and docket printed record on appeal be and the same is hereby extended for the period of thirty days from and including this day.

Arthur J. Tuttle,
District Judge.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan.

GRAND TRUNK RAILWAY COMPANY OF CANADA and THE DETROIT, Grand Haven & Milwaukee Railway Company

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON, and FRANZ C. KUHN, Attorney General of the State of Michigan.

Consolidated Cause.

EASTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the within and foregoing is a true and correct transcript of all and every part of the record and proceedings in the above entitled causes designated by counsel for respective parties; that I have compared such designated portions with the originals on file and of record in my office, and that the same is a true and correct transcript of the whole and of every part thereof as designated.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said court, at Detroit, in said District, this Eighth day of November in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States of America the one hundred and thirty-seventh.

[Seal of the U. S. District Court, Eastern District of Michigan.]

ELMER W. VOORHEIS,
Clerk United States District Court,
Eastern District of Michigan.

Endorsed on cover: File No. 23,428. E. Michigan D. C. U. S. Term No. 853. Grand Trunk Railway Company of Canada and Detroit, Grand Haven & Milwaukee Railway Company, appellants, vs. Michigan Railroad Commission, Cassius L. Glasgow, Lawton T. Hemans, George W. Dickinson, and Franz C. Kuhn, Attorney General of the State of Michigan. Filed November 22d, 1912. File No. 23,428.

7

Supreme Court, U. S.
FILED.
OCT 7 1913
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912

No. ~~853~~ 382

GRAND TRUNK RAILWAY COMPANY OF CANADA, AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,
Appellants,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON and FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Michigan.

ABSTRACT OF RECORD

(FILED FOR CONVENIENCE OF THE COURT.)

G. W. KRETZINGER, JR.,
A. B. BROWNE,
Solicitors for Appellants.

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ERRATUM.—The titles and effective dates of the tariff, given as Exhibit H, occur on page 26; the rates published therein, opposite page 28.

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 853.

GRAND TRUNK RAILWAY COMPANY OF CANADA, AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,

Appellants,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON and FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Michigan.

ABSTRACT OF RECORD

(FILED FOR CONVENIENCE OF THE COURT.)

This abstract has been prepared for the convenience of the court, as much of the time and labor necessary for a careful reading and study of all the pleadings, affidavits in support thereof, and exhibits in the two suits here consolidated, particularly as to details of tariff, can be saved by abstracting the two causes together, showing consecutively as to bills, answers, etc., the similar material facts

involved, and pointing out the few material differences. The amended bills, answers thereto, affidavits in support of said bills and answers, and exhibits in these two causes, will therefore be in each instance abstracted as one, with marginal references to page of the record in which the matter abstracted will be found in the separate causes. Appellant Grand Trunk Railway of Canada will be referred to as the Grand Trunk, appellant Detroit, Grand Haven & Milwaukee Railway Company as the Detroit Company, and appellee Michigan Railroad Commission as the Commission.

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1 Bill of complaint of Grand Trunk as amended, filed July 12, 1912.

105 Bill of complaint of Detroit Company as amended, filed July 30, 1912.

1 Complainant Grand Trunk is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, and is a corporate resident and citizen of said Dominion.

105 Complainant Detroit Company is a corporation of
1, 2, 3, Michigan. The defendants to both bills are: Mich-
105 igan Railroad Commission, a body created under the act of said state approved June 2, 1909, hereinafter more fully referred to, with power to sue and be sued, Cassius L. Glasgow, Lawton T. Hemans and George W. Dickinson, Commissioners thereof, and Franz C. Kuhn, Attorney General of the State of Michigan, empowered and authorized under said act and under other acts of said state to institute and prosecute all necessary actions or proceedings for the enforcement of the statutes and orders herein-

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cord.

below complained of; all residents of the State of Michigan. The amount involved in both suits exceeds the sum of $3,000, exclusive of interest and
6 costs.

Divergence of citizenship in the Grand Trunk bill;
1, 12, 13, 15, 16, 17, and in both bills violation of the
06, 112, 113, 116, Fourteenth Amendment, interfer-
18, 119, 121, 122 ence with interstate commerce, and facts showing a violation of the commerce clause of the Constitution are averred.

2 Complainants are railroad corporations owning,
07 controlling or leasing lines of railroad in the State of Michigan.

3 The main lines owned, leased or operated by the Grand Trunk extend from the City of Portland in the State of Maine, northwesterly to the City of Richmond in the Province of Quebec, and from the City of Point Levi in said province to said City of Richmond and thence in a general southwesterly direction to the Cities of Port Huron and Detroit in the State of Michigan.

107 The railroad of the Detroit Company extends from the City of Detroit to the City of Grand Haven, both in the State of Michigan, and said carrier owns and operates a car ferry from its terminals in said City of Grand Haven to the City of Milwaukee in the
3 State of Wisconsin. Both these railroads carry on
107 a state and interstate business, not only between the State of Michigan and the various states of the United States, but also between the various states of the United States and the Dominion of Canada; a large part of the traffic over their lines is interstate and foreign commerce. They use, own and possess

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switch yards, sidetracks and team tracks at different points in the State of Michigan and particularly within the corporate limits of Detroit in said state, in the district known as the switching district of the City of Detroit, which said switch yards, sidetracks and team tracks are used in conjunction and in connection with their main line or lines and the tracks thereof and are for the sole and exclusive use of said complainants in the conduct of their business, and constitute facilities connected with their main lines or tracks for use in the transportation and interchange of the business carried over said main lines, for their own shippers and customers.

The Grand Trunk Western Railway Company, hereinafter referred to for brevity as the Western Company, is a railroad corporation of the States of Michigan and Indiana, whose main lines run from the City of Port Huron in the State of Michigan to the City of Chicago in the State of Illinois in a general southwesterly direction through the States of Michigan, Indiana and Illinois. None of its lines or tracks run to, through or into the City of Detroit nor to any point nearer said city than a distance of sixty miles. A large part of the traffic of said com-
108 pany is interstate commerce carried on between the several states of the United States and the Dominion
4 of Canada; that company connects with the lines of the Canadian Company at Tappan in the State of Michigan, and with the Detroit Company at the City of Durand in the same state. It has no terminals in the City of Detroit, and forwards traffic to said city over the lines of the two complainant companies by way of the cities named above as connecting points.

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The Detroit & Toledo Shore Line, referred to in the bills, for brevity, as the Shore Line, is a railroad corporation of the States of Michigan and Ohio, engaged in state and interstate commerce, owning and operating a line of railway in the States of Michigan and Ohio, extending from the City of Toledo, Ohio, to the City of Detroit, Michigan, and having no terminals or terminal facilities of any kind in the latter city. The Shore Line uses, for the purposes of its traffic in the City of Detroit, the terminal facilities of the two complainants under a certain agreement dated June 30, 1911, a copy of which is attached to the bills of complaint and marked Exhibit A. (Rec., 22, 127.)

The freight terminal facilities of complainants in Detroit are well and judiciously located and are properly equipped and constructed with reference to the business of the country and that to be reasonably expected, and are well and economically operated. The freight terminals of each complainant represent the value of more than a million dollars and could not be replaced for that sum. The team tracks of complainants in said city represent an actual and fair value of many thousands of dollars expended for lands and tracks and could not be reproduced for many times the sum originally expended; the cost of acquiring the ground and team tracks sufficient for the accommodation of cars and traffic that would, in the ordinary course of business, be delivered to complainants by other lines and industries along the lines of other roads in the City of Detroit, if complainants are required to allow the use of their team tracks for the purpose of local

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switching within said city from and to such other roads and industries on and over complainant's team tracks, would not be less than many hundreds
5 of thousands of dollars. Industrial sidings or tracks
110 from industries on or near complainant's lines in the City of Detroit were constructed and built and are maintained either directly or indirectly by the particular industries accommodated by such tracks; whereas, the team tracks of complainants are laid out on ground acquired by them at great cost, and were constructed and are maintained by them at great expense and require yearly large outlays of money in policing, guarding and repairing the same.

5-6 The Grand Trunk Railway System (hereinafter
110 for brevity called Grand Trunk System) is made up of a number of railroad lines, among which are the two complainants and the Western Company; said lines are lines either under a common management or with a common interest and are not lines which compete with or run parallel to each other. Local tariffs, both state and interstate, covering switching performed by complainants within the corporate limits of Detroit, are issued under the name of the Grand Trunk Railway System (lines west of Detroit and St. Clair rivers).

6 The Legislature of the State of Michigan in an
111 act known as Act Number 139 of 1911, amending Act Number 300 of 1909, provided in Section 7, among other things, as follows:

"(55) Sec. 7. (a) All railroads subject to the provisions of this act * * * shall transfer and deliver without unreasonable delay or discrimination, any freight or cars or passengers destined to

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any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between said connecting lines. * * * Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. * * *

7 "(57). (c) Every corporation owning a railroad
111 in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks. * * * Provided, further, if the corporations cannot agree upon the times at which the cars shall be drawn or the compensation to be paid, the said Commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods,
7 having reference to the convenience and interest of
112 the corporation or corporations and the public to be accommodated thereby, and the award of the Commission shall be binding upon the respective corporations interested therein until the same shall have been revised.

"(57-a). (d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the

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delivering carrier, and shall deliver such car or cars upon said team tracks or sidings in the city or town where such car or cars are received from such connecting line, when required so to do. * * *"

8 The bills aver that said acts are unconstitutional,
112 null and void as to complainants, and their property so far as they require of complainants or their property, or allow or authorize the Commission to require of complainants or their property, the following services, operations, functions or uses, or any of them, viz.: That complainants shall receive cars from another carrier at a junction point or physical connection with such carrier within the corporate or switching limits of the City of Detroit for transportation to complainants' team tracks, or that complainants shall be required to allow the use of their team tracks for cars to be hauled from said team tracks to a junction point or physical connection with another carrier, within such limits, or that they
9 shall be required to haul such cars in either of the
113 above named movements; that complainants shall be required to allow the use of their hold tracks for any of the services above named; that they shall be required to allow the use of any other of their terminal facilities for any of said services; that they shall be required to allow the use of their team tracks, hold tracks or other terminal facilities to any other carrier; that they shall be required to deliver their cars to any other carrier at a junction point or physical connection with such carrier, within the corporate or switching limits of the City of Detroit, for delivery to any other point within said limits, or to receive from such carrier at such junction point

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cars to be delivered to any other point of destination within said limits; that they shall be required to receive cars from other carriers or to deliver cars to other carriers at junction *points within said limits*, where the beginning and conclusion of the movements engaged in by complainants are both within said limits; that they shall be required to allow the use of their team or hold tracks to any industry on their own lines within said limits, or on the line of any other carrier within such limits; that they shall be required to allow the use of their team tracks in any movements between said team or hold tracks, and any other team or hold tracks, either belonging to them or to any carrier within said limits; that they shall be required to undertake, perform or take part in the business of intracity switching or in any transportation movement from any point within the corporate or switching limits of the City of Detroit, to any other point within said limits, or to allow the use of their terminal facilities, team tracks or hold tracks within said limits for any
9 such purpose. So far as said acts or any other acts
113 of the State of Michigan require of complainants any of the above named services or operations, or require the use of complainants' property for any such purposes, said acts are unconstitutional, null and void, and constitute the taking of the property of complainants without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

On or about the 29th day of July, 1911, the Grand Trunk System published its tariff, entitled, "M. R. C. No. 236, I. C. C. No. A-1428, issued July 29, 1911,

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and effective September 1, 1911" (hereinafter for brevity referred to as "M. R. C. No. 236"); which tariff was duly filed with the Michigan Railroad Commission, and the Interstate Commerce Commission, as required by law; a copy of this tariff was filed with the original bills in these cases, and is referred to as Exhibit C in the Canadian bill and as Exhibit B in the Detroit bill. (Rec., 37, 132.) This
9 tariff set forth, among other things, the rates for
114 switching services within the corporate limits of Detroit, and as to team track service provided as follows:

"In case team track deliveries are required for the unloading of shipments received from other carriers, or when such team tracks are used for the loading of shipments for delivery to other carriers, three dollars per car in excess of the charge made for switching to or from industrial sidings will be assessed." (Note 1, Rec., 40, 41, 134, 135.)

Said tariff also provided a charge for switching to and from industrial sidings of five dollars ($5.00), and a charge for team track delivery from junction points within the switching limits of the District of Detroit of eight dollars ($8.00).

The complainants aver that all of said charges were fair, just and reasonable, and that the difference between said charges was not unduly or unjustly discriminatory, nor in violation of the Interstate Commerce Act, or of any act amendatory thereof, or supplemental thereto, or of any acts in the State of Michigan, then or now in force, and then or now constitutional, valid and binding upon these complainants.

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On or about the twelfth day of September, 1911, one John S. Haggerty filed his petition, known as D 461 on the docket of the Commission, against the Western Company impleaded as the Grand Trunk
10 Railway Company, alleging among other things that
114 rates for switching purposes published in said tariff were unreasonable and resulted in discrimination against the user of the team tracks of the defendant to the extent of three dollars per car.

The Commission entered its order dated February 6, 1912 (Ex. D, to Grand Trunk bill, Rec., 69; Ex. C, to Detroit Company bill, Rec., 163), requiring
10 said Western Company to publish and make effective
115 like charges for the movement of a carload shipment received from an industrial in Detroit upon said Grand Trunk Company, consigned for delivery upon a team track or other siding of said road within the same city and for a like shipment received by said Grand Trunk Company from a connecting carrier at a junction point within the corporate limits of Detroit consigned to team track or other siding upon said road within said city; and a subsequent order
13 dated March 15, 1912 (Ex. F, Rec., 73, 167), under
118 a supplemental petition of said Haggerty, suspending a subsequent tariff of the Grand Trunk System, in which complainants had advanced the rate for switching between hold or team tracks on each of their lines within said city to eight dollars per car, the same sum as charged previously for switching between industrial tracks and hold or team tracks on each of their lines and between such tracks and junction points with other carriers, all within said boundaries. (Ex. E, Rec., 70, 167.)

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10-12 These orders are alleged by the bills to be uncon-
115 stitutional, null and void, for the reason, among others, that complainants, who owned, operated and controlled the team tracks, terminals and other property affected by these orders and received the rates and income arising therefrom, had not been made parties to these proceedings nor been heard.

[These orders were, after the filing of this bill, canceled by the order of the Commission dated May 14, 1912 (Defendant's Exhibit A, Rec., 91, 185), as having been directed against the Western Company, which did not own the tracks in question, those tracks being owned or operated, as set up by the bill, by complainants.]

13 Thereafter the Grand Trunk System issued its
118 tariff, dated March 26, 1912, entitled Supplement No. 5 to M. R. C. No. 236 (Exhibit G, Rec., 74, 168), suspending supplement No. 4 above described; and
14 on or about March 30, 1912, duly published its fur-
118 ther tariff dated that same day, entitled Supplement No. 6 to M. R. C. No. 236, etc. (Exhibit H, Rec., 76, 170.) Under the terms of said tariff all rates between industries having private sidings on the Grand Trunk System, including the lines of complainants,
14 and hold or team tracks on said system, and all rates
119 between hold or team tracks on said system and other hold or team tracks on said system, including the lines of complainants at Milwaukee Junction or West Detroit, Michigan (all said points being within the corporate limits of the City of Detroit and

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within the Detroit switching limits heretofore mentioned), and all rates between junction points of all other carriers within said corporate limits of said city, and the team tracks of complainants, were canceled (Ex. H, Rec., 78, 172), and said team tracks withdrawn from all intracity, intrastate and interstate switching movements. The Shore Line, under its contract for equal use of these terminals for interchange of cars (Ex. A, pars. 1, 11, Rec., 22, 24, 127, 129), was excepted as to traffic originating at, or destined to points beyond the boundaries of the switching district of said city, upon which the Shore Line received a revenue or load haul to or from West Detroit. The bill avers that while the team tracks are the private property of the complainants, which they are not required to allow to other carriers for the services herein complained
15 of, they yet have the right to allow the use
119 of such team tracks to other carriers under such conditions as they may deem proper; that the Shore Line has no terminal facilities within the corporate limits of the City of Detroit, and that complainants have the right to allow the use of their terminal facilities to said Shore Line upon such terms and conditions as to them may seem just and reasonable; that said allowance of these team tracks is required by the contract between the Grand Trunk Company and the Shore Line (Exhibit A).

15 Said last named tariff was suspended by said Com-
120 mission by its order dated April 10, 1912 (Defendant's Exhibit B, Rec., 92, 186). Said Commission

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threatens and gives out, and has threatened and given out, that it will require complainants to allow the use of their team tracks to industries on their own lines within the switching or corporate limits of Detroit and to other railroads connecting with complainants at junction points within said switching or corporate limits of said city, and to industries on the lines of said other railroads at rates and on conditions to be fixed and named by said Michigan Commission, and on rates and conditions similar to or equal to the rates at which complainants perform other switching services; and that it will make complainants parties to said proceedings brought by said John S. Haggerty and to said order entered therein (April 10, 1912), and to all proceedings under said suspension of said last named tariff, and that it will require complainants to con-
16 tinue such local switching, and will further require
120 complainants to allow the use of their terminals to, or to receive from, transfer for or deliver cars to other carriers at junction points with such other carriers in local movements within said city to or from complainant's hold or team tracks within said city.

(That the Commission will so require is admitted in their answers to the two bills. Rec., 88, pars. XVII, XVIII; Rec., 89, par. XXI; Rec., 182, pars. XIX, XX; Rec., 183, par. XXIII.)

16 This order of the Commission in so essaying to
120 regulate the use of complainant's terminals, and requiring complainant to give the use of said terminals to other railroads engaged in like business, and suspending the tariff whereby complainants attempted to withdraw said terminals from the use of

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other carriers, as above set forth, and from the use of industries along complainant's lines within the limits of said city and along the lines of such other carriers, and so requiring complainants to do a local switching business between points wholly within the corporate limits of the City of Detroit [as expressly threatened by the averments of said answer above set forth] are null, void and of no effect; that said Commission has no authority or jurisdiction to require any of said services so required by said order.

16 Said Act of the Legislature of the State of Mich-
121 igan of June 2, 1909, being Act Number 300 of 1909, together with the amendments thereto, and said respective orders, and each of them, are, in the penalties prescribed for their violation, so drastic that no owner or operator of railway property can invoke the jurisdiction of any court to test the validity thereof except at the risk of imprisonment in the jails in the various counties through which the roads of complainants run. (It is to be noted that the answers to these bills specifically aver, as above shown, that these penalties will be enforced. The penalty clauses, Sections 43 and 46, are set forth in Appellants' Brief.) For these reasons said act, together with all amendments thereto, including Act 139 of the Laws of 1911 of said Legislature, and said respective orders and each of them as to complainants, the requirement of the functions and services above enumerated and the penalties threatened to be enforced for failure to perform said functions and services, deny to complainant the equal protection of the laws and deprive them of their property without due process of law, and are and

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each of them is, for that reason, unconstitutional and void.

17 These complainants are owners, holders or
121 lessees, as above shown, of many tracks covered by said orders and of which said services are threatened to be required by said Commission. To require these services or functions of them and of their
17 team tracks will be to take their property without
122 compensation and without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

Every freight shipment and every demand upon complainants requiring them to accept cars from or deliver cars to other carriers at junction points within said corporate limits of said city, or to perform any of the other functions or uses enumerated above, and every demand for any of the various services named in these bills may, under said order (April 10, 1912; Defts.' Ex. B, 92, 186) suspending complainant's tariff known as Supplement No. 6 to M. R. C. No. 236, more fully above described, and under the threat of the Commission averred in its answers and set forth above, result in an action against complainants or in a criminal proceeding against their officers, agents, directors or employes
18 and will result in an endless number of actions at
122 law and criminal proceedings; if complainants, their officers, directors, agents and employes, shall refuse obedience to said order of said Commission, suspending complainant's tariff above described, or if they or any of them shall fail or refuse to put in effect tariffs fixing the right to the use of complainant's team tracks on the same terms and conditions

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and for the same rates as complainants provide be-
18 tween industries, and if complainants refuse to
123 engage in switching between points within the corporate limits of the City of Detroit or to allow the use of their team tracks for such switching movements, or to allow the use of their team tracks to other carriers, or to industries on complainant's lines or on the lines of other carriers, all within such corporate or switching limits of said city, said Commission and said Franz C. Kuhn, as Attorney General of the State of Michigan, will, as complainants are advised and believe (admitted by answers as shown, *supra*), institute proceedings under and in accordance with the provisions of the statutes of the State of Michigan at law or otherwise, against complainants, their officers, directors, agents or employes, to enforce said order and require said services and to enforce said statutes and the penalties and provisions thereof.

19-20 The bills pray that the acts of the Legislature
123-125 of the State of Michigan and the orders of said Commission purporting to be made thereunder in so far as they require any of the services above enumerated, may be declared null and void as to complainants; that defendants be required to answer the bills, etc., and that injunctions, interlocutory and perpetual, be entered against defendants, restraining and enjoining them from continuing to suspend said tariff canceling the provisions for such service, and from attempting to enforce said acts so far as they require said services, and from taking any action, step or proceeding against complainants or any of their officers, agents

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or employes to enforce any of the penalties or remedies for any such violation of said orders or either of them.

21

125 **Verification.**

22 EXHIBIT A. (IDENTICAL IN BOTH BILLS.)

127 AGREEMENT BETWEEN DETROIT AND TOLEDO SHORE LINE R. R. AND GRAND TRUNK RAILWAY COMPANY OF CANADA.

1. The Grand Trunk permits the Shore Line to use all tracks in the yards of the Grand Trunk at West Detroit, so-called, viz:—all Grand Trunk tracks west of Vinewood Avenue, for the purpose of delivering cars to the Grand Trunk, and receiving cars from the Grand Trunk; also for the purpose of interchanging cars with other Railroad Companies at West Detroit, and for loading and unloading cars within these limits.

* * * * * * * * *

24 129 11. The Grand Trunk will, in carrying out the terms of this agreement, give the Shore Line as prompt and efficient service as is given to its own business. The Superintendent of Terminals, or other officer in charge of the Grand Trunk Terminals, at any time of congestion, shall treat Shore Line trains or cars on a parity with the trains or cars of the Grand Trunk in the matter of entrance to and use of West Detroit yard; that is to say, the Shore Line will enjoy equal rights and obligations in and to the use of the West Detroit Yards, as the Grand Trunk.

12. The Shore Line will pay to the Grand Trunk each month for the preceding month, for the said service and in maintenance of the said facilities at

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West Detroit, a sum which shall bear the same ratio to the total expense, of salaries, wages, etc., of the staff at West Detroit,—including fuel, lights, stationery, maintenance of tracks and buildings, etc.,—as the number of cars handled for the Shore Line in interchange with the Grand Trunk Company, and all other Companies at West Detroit, bears to the total number of cars handled at West Detroit for that month.

* * * * * * * * *

26 15. The Shore Line will pay to the Grand Trunk
131 Company in monthly cash settlements as follows:

A valuation of the Grand Trunk property tracks and station buildings west of Vinewood Avenue, which is called the West Detroit Yard, has been agreed upon at One Hundred Thousand Dollars ($100,000.00), and it has been agreed that the Shore Line shall have equal one-half use of this property, and shall pay monthly as a rental their wheelage proportion of five per cent. (5%) per annum on the said valuation, wheelage to be computed as per Clause 12.

17. This agreemnt to remain in effect until ninety days after either party thereto shall give written notice to the other of its desire to terminate the same.

Executed in duplicate this 30th day of June, 1911, by the parties through their respective duly authorized officials.

27 EXHIBIT B.

ACT NO. 139 OF THE PUBLIC ACTS OF MICHIGAN, SESSION OF 1911.

(Material portions set out in abstract of bills, *supra*, pp. 6-8, and in Appellants' Brief.)

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37 EXHIBIT C GRAND TRUNK BILL. EXHIBIT B TO DE-
132 TROIT BILL.

Local Freight Tariff No. 502-A.

I. C. C. No. A-1428. M. R. C. 236.

Grand Trunk Railway System (lines West of Detroit and St. Claire Rivers.)

Issued July 29, 1911; effective September 1, 1911.

NOTES.

40 NOTE 1: The freight traffic of this System orig-
134 inating at and received at stations named herein requires for its proper handling all of its team track facilities; in case team track deliveries are required
41 for the unloading of shipments received from other
135 carriers, or when such team tracks are used for the loading of shipments for delivery to other carriers, $3.00 per car in excess of the charge made for switching to or from industrial sidings will be assessed.

NOTE 1A: On inbound traffic received via this System requiring team track delivery on the lines of other carriers or upon outbound traffic loaded on team tracks of other carriers and forwarded via this System, $3.00 per car in excess of the amount absorbed for switching to or from industrial sidings will be absorbed by this System, out of the through rate, subject to Rule 1.

* * * * *

NOTE 10: On traffic switched to or from industries having industrial sidings on the Grand Trunk Railway System, originating at or destined to industries located on another carrier within the boundaries of the same town or city the charge of this System for such movement will be $3.00 per car.

This tariff, in addition to the above specified charges, provides the following switching charges: From one to another industry having private sidings, or from one hold or team track to another hold or team track on Grand Trunk Ry. System tracks within switching limits at Detroit, $5.00 per car; between team tracks on said system to junction points with other carriers within the switching limits of said city, $8.00.

The points named in remaining pertinent portion of the tariff are the various industries, junctions, team tracks and sidings in said city.

Supplement 3 of said tariff issued February 21, 1912, effective intrastate March 5, 1912, interstate March 25, 1912, amends Note 10 as follows:

NOTE 10: On traffic handled on and interswitch movement to or from industries only having industrial sidings on the Grand Trunk Railway System originating at or destined to industries having industrial sidings located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car.

Provides similar charges, as in the previous tariff, between additional industries and industrial sidings, and the team tracks and junction points named in the previous tariff.

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69 EXHIBIT D TO GRAND TRUNK BILL. EXHIBIT C TO
163 DETROIT BILL.

ORDER OF MICHIGAN RAILROAD COMMISSION OF FEBRUARY 6TH.

STATE OF MICHIGAN.

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission held at its offices in the City of Lansing on the 6th day of February, A. D. 1912.

Present, Hon. C. L. Glasgow, Chairman,
Hon. Lawton T. Hemans,
Hon. G. W. Dickinson,
Commissioners.

John S. Haggerty, Complainant,
vs.
The Grand Trunk Western Railway Company,
Defendant.

D—461

Complaint was filed in the above entitled matter on the 12th day of September, 1911, upon which complaint issued was joined and proofs taken. After duly considering the proofs submitted and arguments and briefs of counsel, this Commission finds that the allegations of said complaint are sustained; that the charge by the Grand Trunk Western Railway Company in and by its published tariffs whereby a different and a greater rate is charged and exacted for the movement of a carload shipment from a junction point with a connecting road to a team track on said Grand Trunk Western Railway than

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is charged and exacted for the movement of a like shipment from an industry to a team track upon the same line constitutes and is an undue and unjust discrimination.

Therefore, by virtue of the authority vested in us by law, it is hereby ordered that the Grand Trunk Western Railway Company do on or before thirty (30) days from this date issue, file and make effective a tariff removing such discrimination, and by such tariff publish and make effective like charges for the
70 movement of a carload shipment received from an
164 industry within the City of Detroit, upon the said Grand Trunk Western Railway, consigned for delivery upon a team track or other siding of said road within the same city, and for a like shipment received by said Grand Trunk Western Railway from a connecting carrier at a junction point within the corporate limits of the City of Detroit, consigned to team track or other siding upon said road within the same city.

C. L. Glasgow, Chairman.
G. W. Dickinson, Commissioner.
Lawton T. Hemans, Commissioner.

70-71 Exhibit E to Both Bills.

165 Supplement No. 4 to Tariff 502-A. Effective intrastate March 16, 1912; interstate April 8, 1912.

Change 4

Change Note 10 of Supplement No. 3 to read as follows:

Note 10.—On traffic handled on an inter-switch movement to or from **industries only having industrial sidings** on the Grand Trunk Railway System originating at or destined to **industries having industrial sidings** located on another carrier within the boundaries of the switching district of the same town or city, the charge of this System for such movement will be $3.00 per car.

This Note will **not** apply within the boundaries of the switching district of Detroit, Mich. For rates applicable at these points, see Supplement No. 4.

Sup. No. 4

Change 15

Change page 15, naming switching rates, as follows:

Switching Charges to or from Industries and Hold or Team Tracks on Grand Trunk Railway System and Junction Points with Connecting Carriers Within the Switching District of Detroit, Mich.

The following rates will be charged on carload traffic switched between industries and between team tracks within the boundaries of the switching district of Detroit, Mich.:

BETWEEN	AND	Rate in Dollars per Car
Industries having private sidings on G. T. Ry. System	Industries having private sidings on G. T. Ry. System	$5.00
Industries having private sidings on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	8.00
Hold or team tracks on G. T. Ry. System	Hold or team tracks on G. T. Ry. System	(A)8.00
Junction points with connecting carriers within the boundaries of the switching district of Detroit, Mich.	Industries having private sidings on G. T. Ry. System within the boundaries of the switching district of Detroit, Mich.	(A)5.00
Junction points with connecting carriers within the boundaries of the switching district of Detroit, Mich.	Hold or team tracks on the G. T. Ry. System within the boundaries of the switching district of Detroit, Mich.	8.00

(A) Advance.

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73

Exhibit F (to both bills).

167 ORDER OF MICHIGAN RAILROAD COMMISSION OF MARCH 15TH.

STATE OF MICHIGAN.

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission held at its offices on the 15th day of March, A. D. 1912.

In the matter of the application of John S. Haggerty, Complainant, vs. Grand Trunk Western Railway Company, Defendant, to have the effective date of Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236 postponed 45 days. } D-461.

Complaint having been made by John S. Haggerty, of Detroit, Michigan, against Grand Trunk Western Railway Company, setting forth that the said Grand Trunk Western Railway Company has issued a certain tariff known as Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236, effective March 16th, 1912, which said supplement shows an advance in rates for team track delivery within the switching district of the City of Detroit, and said complainant alleging that the rates set forth in said Supplement No. 4 to Grand Trunk M. R. C. Tariff No. 236 are unreasonable and exorbitant, and if put in effect would mean a great hardship to said John S. Haggerty;

Now, therefore, by virtue of the authority vested in us by law, it is ordered that the date on which said rate mentioned and set forth in said Supplement No. 4 to M. R. C. Tariff No. 236, to become effective March 16, 1912, is hereby postponed until

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April 29, 1912, in order that this Commission may have an opportunity to investigate the reasonableness of such proposed rate and the matter set forth in said complaint.

C. L. GLASGOW,
Chairman.

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74 EXHIBIT G (TO BOTH BILLS).

168 Supplement No. 5 to Tariff No. 502-A; Supplement No. 5 to M. R. C. No. 236 provides:

The effective date of intrastate rates named in Supplement No. 4 to M. R. C. No. 236, Tariff No. 502-A, is postponed until April 29, 1912. Pending reissue, restoration or cancellation of the intrastate rates named in Supplement No. 4 to M. R. C. No. 236, Tariff No. 502-A the rates named in M. R. C. No. 236, Tariff No. 502-A and Supplement No. 3, will apply.

Issued March 26, 1912, under authority of Michigan Railroad Commission of March 15, 1912. File D-461.

76 EXHIBIT H (TO BOTH BILLS).

170 Supplement No. 6, Tariff No. 502-A. Supplement No. 6 to M. R. C. 236, cancel Supplement No. 4 and 5. Supplement No. 5 to I. C. C. No. A-1428, cancel Supplement No. 4. Issued March 30, 1912; effective, intrastate, April 11, 1912; interstate, May 8, 1912.

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80 AFFIDAVITS IN SUPPORT OF BILLS.

174 (Similar in terms and abstracted together.)

For the Canadian Company, Charles S. Cunningham, superintendent of its lines and business in Michigan; for the Detroit Company, Lawrence H. Nolan, superintendent of terminals of said company, deposed:

That deponents are informed and believe, and have good ground to fear that the Commission intends to make another order or to bring complainants within the terms of the order of April 10, 1912, and to thus require complainants to receive for delivery upon their team tracks in Detroit cars delivered to them for such purposes from other railroad companies in said city and from shippers upon private sidings therein; that the team tracks of complainants are no greater in capacity than are absolutely required for the business above named and are daily crowded to their capacity and have been
80 constantly so crowded; that complainants are in the
175 daily conduct of freight business on said team tracks, both state and interstate.

Deponent Cunningham states that the use of said team tracks of said Grand Trunk Company for carload business, if received from other railroads in said city, will inevitably congest its business thereon so as to interfere with the loading, unloading and handling of cars thereon, including the traffic of the State of Michigan and also interstate traffic; that if said company shall be required to receive said switching business on its said team tracks it will necessarily follow, and when such cars were received it did follow, as

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a result, that interstate business was and will be
81 greatly obstructed and delayed; that in fact some of the interstate business must necessarily be crowded out; that said company is daily engaged in handling of passengers and United States mails and that said mails are delayed by the congestion of said team track terminals of said company in Detroit and must necessarily be delayed so long as said company is required to receive upon its team tracks cars switched to it in Detroit from other railroads and private sidings on other railroads in obedience to the requirements of said statute and orders issued thereunder.

174 Deponent Nolan states that the requirements of
175 local or intracity switching, and the switching of cars from junction points of other railroads within the switching district of the City of Detroit to the team tracks of said Detroit Company within the last year have so congested the tracks of said company as to seriously affect the interstate and intrastate business thereof.

81 Both deponents state that if complainants shall be
175 required to handle such business it will be impossible to perform such additional services without buying additional land and building additional tracks for that purpose, inasmuch as such business cannot be conducted upon team tracks of complainants at their present capacity; that there is no vacant land adjacent or convenient to said complainants' tracks which can be acquired and used for team track purposes; that it will be necessary to purchase and demolish buildings in order to lay such additional tracks and this could only be done at a cost of many hundreds of thousands of dollars.

Date Effective	Tariff Reference	Add, Cancel, Change	Pages	
		Change	3	**Note 1** will not apply at D... celing rates between and to a... provided in this Supplement.
		Change	4	**Change Note 10** of Supplem... **Note 10.**—On traffic handle... **trial sidings** on the Grand Tru... **trial sidings** located on anot... town or city, the charge of th... This Note will **not** apply ... applicable at these points, se...
				DETROIT,
		Cancel	15	Cancel rates on **Sand** and **G**... and team tracks, leaving no r...
Intra-state April 11, 1912	Sup. No. 6	Cancel	15	**Cancel** rates provided for ... **"Switching to**
				Except as otherwise specifi... traffic switched between poin...
Inter-state May 8, 1912	Sup. No. 5			**BETWEEN**
		Change	15	Industries having private si... T. Ry. System.....
				Industries having private si... T. Ry. System.....
				Hold or team tracks on G... tem .....
				Junction points with connec... within the boundaries of t... district of Detroit, Mich.
				Connection with D. & T. S... West Detroit, Mich.....

(1) Rates provided in Supplements superseded ...
(2) Applies only on traffic originating at or des...
Mich., upon which the Detroit & Toledo Shore L...

EXHIBIT H.

etroit, Milwaukee Jct., or West Detroit, Mich. This has the effect of can-
nd from team tracks of this System at these points, except as otherwise

ient No. 3 to read as follows:
d on an inter-switch movement to or from **industries only having indus-**
unk Railway System originating at or destined to **industries having indus-**
her carrier within the boundaries of the switching district of the same
his Syetem for such movement will be $3.00 per car.
within the boundaries of the switching district of Detroit, Mich. For rates
e Supplement No. 6.

MILWAUKEE JCT. AND WEST DETROIT, MICH.
(Notes 4 and 5 of tariff.)

Gravel from the Detroit River to Grand Trunk Railway industrial sidings
ates in effect.

on page 15 of tariff under the following caption:
o or from Industries on Grand Trunk System Tracks."

ically provided for herein, the following rates will be charged on carload
nts within the boundaries of the switching district of Detroit, Mich.

	AND	Rate in Dollars per Car
dings on G.	Industries having private sidings on G. T. Ry. System	$5.00
dings on G.	Hold or team tracks on G. T. Ry. System	(1)
T. Ry. Sys-	Hold or team tracks on G. T. Ry. System	(1)
ting carriers he switching	Industries having private sidings on G. T. Ry. System within the boundaries of the switching district of Detroit, Mich	5.00
L. R. R. at	Hold or team tracks on the G. T. Ry. System within the boundaries of the switching district of Detroit, Mich	(2)8.00

by this issue are hereby canceled, leaving no rates in effect.
stined to points beyond the boundaries of the switching district of Detroit,
ine R. R. receives a revenue or road haul to or from West Detroit, Mich.

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82

ANSWERS OF DEFENDANTS.

176 Admit the averments of the bill as to the description of the commission and its members, their residence and functions; the passage by the Michigan Legislature of the acts herein complained of; the proceedings in the matter of John S. Haggerty; the issuance of the various tariffs referred to; the erroneous issuing of orders against the Western Com-
88 pany; that said Commission intends to require com-
182 plainants to continue such local switching and business as is required by the laws of the State of Michigan; that it will require complainants to allow the use of their terminals to receive from, transfer for, or deliver cars to other carriers having terminals of their own within the corporate limits of Detroit, at junction points with such other carriers in local movements in said city, to or from complainants' hold or team tracks within said city in so far as the
89 same are required by the laws of the State of Michi-
183 gan; that if said complainants shall refuse obedience to said order of said Commission dated April 10, 1912 (Exhibit B), and if complainants refuse to comply with the laws of the State of Michigan requiring them to make interchange of local traffic, said Michigan Railroad Commission and said Franz C. Kuhn, as Attorney-General of the State of Michigan, on behalf of said Commission and on behalf of the State of Michigan, will institute proceedings under the statutes of the State of Michigan against complainant to enforce said order of suspension and said laws of the State of Michigan.

Defendants deny all allegations as to the absence

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of power in the Legislature to require the services in question, or the powers of the Commission to issue orders requiring said services, or the power of the Attorney-General to enforce said orders and to exact the fines and penalties for any disobedience to the same; deny that any rates prescribed by said orders are unjust or unreasonable or unsupported by the evidence; deny that they intend to enforce the original orders erroneously entered against said complainants.

As to all other material averments, they put the complainants on proof.

90 Verification.

184

DEFENDANT'S EXHIBIT A.

91 Order Michigan Railroad Commission cancelling
185 its orders dated February 6, 1912, and March 15, 1912.

92 DEFENDANTS' EXHIBIT B.

186 STATE OF MICHIGAN.

BEFORE THE MICHIGAN RAILROAD COMMISSION.

Session of the Michigan Railroad Commission held at its offices in the City of Lansing on the 10th day of April, A. D. 1912.

D-461.

In the matter of the postponement of Supplement No. 6 to Grand Trunk M. R. C. Tariff 236 effective April 11, 1912, applying on Team Track Switching in the City of Detroit, for a period of 45 days.

It having come to the knowledge of the Michigan

Railroad Commission that the Grand Trunk Railway Company has published a tariff known as Supplement No. 6 to M. R. C. 236, effective April 11, 1912, the same applying on team track switching within the City of Detroit, said supplement cancelling team track switching on the Grand Trunk Railway in said City of Detroit, leaving no rates in effect, and the Commission on its own initiative being desirous of investigating the reasonableness of the application of that part of said Supplement as affects the team track switching, hereinbefore mentioned;

Therefore, by virtue of the authority vested in us by law, as shown in Section 10 of Act 139 of the Public Acts of 1911,

It is Hereby Ordered, that said Supplement No. 6 to Grand Trunk M. R. C. Tariff No. 236 to become effective April 11, 1912, be and the same is hereby postponed until May 25, 1912, in order that this Commission may have an opportunity to investigate the reasonableness of such Supplement as hereinbefore set forth.

C. L. Glasgow, Chairman.
G. W. Dickinson, Commissioner.
Lawton T. Hemans, Commissioner.

Affidavits of Cassius L. Glasgow on Behalf of Defendants.

(Filed June 1st, 1912.)

State of Michigan, County of Ingham, ss.

Cassius L. Glasgow, being duly sworn, deposes and says:

That he is Chairman and a member of the Michi-

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gan Railroad Commission, and is familiar with freight transportation and the transportation problems in the City of Detroit; that on or about the 20th and 21st days of May, 1912, he investigated freight conditions in said city to ascertain the cause of present congestion of freight traffic; that he has talked with numerous business men and manufacturers directly interested in freight transportation in
94 the City of Detroit; and that he has by other means
188 familiarized himself with freight transportation and freight problems, and has investigated the causes of present freight congestion of said city.

That he is familiar with and has knowledge of the conditions existing on the tracks of carriers in the City of Detroit during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic, and the transportation of cars from junction points in said city to the destinations to which they are consigned, as carried on within the last year pursuant to the requirements of subdivision d of Section 7 of Act No. 139 of the Public Acts of the State of Michigan for 1911; and that such interchange of traffic did not in any way tend to congest or impede traffic on the tracks of said railroads in the City of Detroit, including the lines of the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company, and in no way affected interstate and intrastate business except to facilitate the same and to relieve congestion thereof on the tracks of the various railroads in the City of Detroit.

Deponent further says that a compliance upon the part of the Grand Trunk Railway Company of Can-

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ada and the Detroit, Grand Haven and Milwaukee Railroad Company with the requirements of subdivision d of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will not overtax the capacity of the tracks of said companies in the City of Detroit, and will not cause congestion of traffic on said tracks and will not interfere with interstate traffic but will facilitate such traffic; and that compliance on the part of said Grand Trunk Railway Company of Canada and said Detroit, Grand Haven and Milwaukee Railroad Company with the requirements of said statute will not cause any interference with the handling of passengers or the United States mails by said companies; and that such passenger traffic and such mail carriage will in no way be interfered with or delayed.

Deponent further says that during the past year, while railroad companies operating in the City of Detroit including the Grand Trunk Railway Company of Canada and the Detroit, Grand Haven and Milwaukee Railroad Company were complying with the requirements of said subdivision d of Section 7 of Act No. 139 of the Public Acts of 1911, and were interchanging carload traffic as therein required, no complaints were received by the Michigan Railroad Commission from any carrier in said city relative to congestion of traffic caused by such interchange of traffic, and no complaints were received by said
55 Commission from any source that such interchange
189 of traffic was causing congestion of freight traffic or interference with or delay in passenger traffic or with the United States mails; and that no application was made to said Commission by any of said car-

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riers asking for relief under the railroad act of the State of Michigan from congestion of traffic caused by such interchange.

CASSIUS L. GLASGOW.

Subscribed and sworn to before me this 31st day of May, A. D. 1912.

WILLARD N. SWEENEY,

(Seal) *Notary Public Bay County, Michigan, Acting in Ingham Co.*

My commission expires Dec. 20, 1915.

FURTHER AFFIDAVITS IN SUPPORT OF APPLICATION FOR INTERLOCUTORY INJUNCTION.

95 AFFIDAVITS OF GEORGE W. GULLIFORD, CHIEF CLERK AT
189 MILWAUKEE JUNCTION, DETROIT, OF COMPLAINANTS.

(Filed July 3, 1912.)

States that deponent is familiar with and has knowledge of the conditions existing on the tracks of the complainant company in the City of Detroit during the past year, and is familiar with the effect of the requirement of local or intra-city interchange of traffic and the transportation of cars from junction points in said city
96 to the team tracks and other terminal facilities
190 of complainant, and from such team tracks to other team tracks, industries and junction points within said city, and from industries within said city to complainant's team tracks, all as carried on within the last year, pursuant to the requirements of subdivision "d" of Section 7 of Act No. 139 of the Public Acts of the State of Michigan, for 1911; that such

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traffic did constantly and to a considerable extent congest and impede traffic on the tracks of complainant company in the City of Detroit, and affected and delayed both the interstate and intrastate commerce of complainant.

Deponent further says that a compliance on the part of complainant company with the requirements of subdivision "d" of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will overtax the capacity of the tracks of complainant in the City of Detroit, and will cause congestion of traffic of said tracks, and will interfere with the traffic of complainant both interstate and intrastate; that the terminal facilities of complainant when constructed were adequate for the business to be reasonably expected but are no greater than is required to accommodate the business, interstate and intrastate (but not intracity as required under said act and described above) of complainant; that there is not sufficient vacant land in the vicinity of complainant's terminals which complainant can acquire for the purpose of team tracks necessary to accommodate the traffic that complainant will be required to handle if said act and the order of said Railroad Commission of April 10, 1912, complained of in said bill of complaint, should be enforced against complainant; that complainant will be required to purchase or condemn land already occupied with buildings, in the vicinity of its terminal, if it shall be required to do such business, and that this will cost complainant hundreds of thousands of dollars. Further deponent sayeth not.

(Signed) GEORGE W. GULLIFORD.

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97 Affidavits of Lawrence H. Nolan, superintendent
191 of Detroit Terminals of both complainants, filed July 3, 1912, identical with affidavit of George W. Gulliford, *supra*. (Rec., 95.)

99 Affidavits of Gordon O'Day, car distributor at De-
193 troit of both complainants, filed July 3, 1912, identical with affidavit of Gulliford, *supra*.

101 Affidavits of Henry Bramley, chief clerk at West
195 Detroit station of both complainants, filed July 3, 1912, identical with affidavit of Gulliford.

103 Affidavits of John McFadzean, agent at Detroit of
197 both complainants, filed July 3, 1912, identical with affidavit of Gulliford.

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199 OPINION ON APPLICATION FOR INTERLOCUTORY INJUNCTION.

(Filed Aug. 5th, 1912.)

THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION.
IN EQUITY.
No. 5471.
No. 5476.

Grand Trunk Railway Company of Canada,
Complainant,
vs.
Michigan Railroad Commission *et al.*,
Defendants,
and
Detroit, Grand Haven & Milwaukee Railway Company,
Complainant,
vs.
Michigan Railroad Commission *et al.*,
Defendants.

Before Knappen and Denison, Circuit Judges, and Sater, District Judge.

PER CURIAM.

The Grand Trunk Railway Company of Canada and the Detroit, Grand Haven & Milwaukee Railway Company filed each its separate bill to restrain the Michigan Railroad Commission and the Attorney General of that State from enforcing certain orders of the Commission made under the authority of the

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Michigan Railroad Commission Act (being Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 130 P. A. Mich., 1911), relating to the intracity transportation of carload freight between complainants' terminal tracks and their junctions with other roads, and to restrain the enforcement of any penalties or remedies provided for the viola-
200 tion of the orders of the Commission or of the Acts of the State of Michigan in question. Applications for interlocutory injunctions were heard under Sec. 266 of the New Judicial Code.

Complainants contend that the statute and orders of the Commission in question are unconstitutional and void, first, as denying the equal protection of the laws, in violation of the 14th amendment to the federal constitution, and, second, as contravening the commerce clause of that constitution. These objections present the larger questions in the case. Other objections, addressed to the validity of the statute and of the proceedings involved, will be stated later.

The purpose of the Commission Act, as indicated by its title, is "to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, ensure adequate service, create the Michigan Railroad Commission, define the duties and powers thereof, and to prescribe penalties for violation hereof."

The term "railroad," as used in the act, is declared to include all railroads, whether operated by steam, electric or other motive power, except logging or other private railroads not doing business

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as common carriers, and street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of 5 miles of the boundaries thereof. The provisions of the act are made applicable "to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing and mileage charges."

By section 7 of the original act, the railroads subject to its provisions are required to "afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith," and to "transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line" without discrimination in rates and charges between such connecting lines.

Any person delivering property for transportation is given the right of routing shipments, and of prescribing over what connecting line transportation
201 shall be made; and it is declared to be the duty of the initial carrier to observe the direction of such shipper, and in case such direction is not given "to so route the freight as to give the property the benefit of the lowest rate published between points of

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origin and destination." By the same section the Commission is empowered, upon application, to require steam railroads and interurban and suburban railways to interchange cars, carload shipments, less than carload shipments, and passenger traffic "where it is practicable and the same may be accomplished without endangering equipment, tracks or appliances of either party"; and to require the construction of physical connections upon such terms as the Commission may determine. The same section provides that "every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks; Provided, such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded": with the further proviso that "if the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said Commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the interests of the corporation or corporations and the public to be accommodated thereby." The award of the Commission is declared to be "binding upon the respective corporations interested therein until the same shall have been revised."

By sections 22 and following, provision is made for hearing by the Commission of complaints of un-

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reasonable or unjustly discriminatory rates (joint or otherwise), regulations or practices, and for the fixing of maximum rates, and for setting aside unreasonable or discriminatory regulations, practices and services, and the substitution of proper action in lieu thereof.

By sections 26 and following, provision is made for action in chancery against the Commission by any common carrier or other party in interest who may be dissatisfied with any order of the Commission of the nature of that above referred to, and the court is empowered "to affirm, vacate or set aside the order of the Commission in whole or in part, and to make such further order or decree as the courts shall decide to be in accordance with the facts and the law." Either party is given the right of appeal to the Su-
202 preme Court of the State; and in all actions under this provision the burden is upon the complainant "to show by clear and satisfactory evidence that the order of the Commission complained of is unlawful or unreasonable, as the case may be."

By the Amendment of 1911 a new subdivision was added to Sec. 7, as follows:

"(d) Every common carrier operating within this State shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall

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deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: Provided, that when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

After the taking effect of the amendment of 1911, and on July 29, the Grand Trunk Railway System filed its tariff (effective September 1, 1911), covering so-called switching charges within the switching or corporate limits of the City of Detroit, prescribing a charge of $5.00 per car for switching carload traffic from one to another industry having private sidings, or from one "hold" or team track to another "hold" or team track of the Grand Trunk Railway System, and imposing an additional charge of $3.00 per car in case of team track deliveries for the unloading of shipments received from or loading of shipments delivered to other carriers. Upon complaint of a shipper made against "The Grand Trunk

Western Railway Company," the Commission, after hearing, held that the charging of a greater rate for the movement of a carload shipment from a junction point with a connecting road to a team track on the Grand Trunk Western road than as charged for a like shipment from an industry to a team track upon the same line is an undue and unjust discrimination; and the Railway Company was ordered to make and file a tariff removing such discrimination and making "like charges for the movement of a carload shipment when received from an industry within the City of Detroit, upon the said Grand Trunk Western Railway, consigned for delivery upon team track or other siding of said road within the same city, and for a like shipment received by said Grand Trunk Western Railway from a connecting carrier at a junction point within the corporate limits of the City of Detroit, consigned to team track or other siding upon said road within the same city."

The Grand Trunk System thereupon published a new tariff, removing the discrimination by raising to $8.00 the charge for movement of cars between team tracks and between industrial tracks and team tracks located on the Grand Trunk lines. Upon further complaint that the new tariff was unreasonable and exorbitant, the Commission, on March 15, 1912, ordered the postponement of the effective date of the new tariff until April 29, to give the Commission opportunity to investigate the reasonableness of the proposed rate. Thereupon the Grand Trunk System issued a supplement to its tariff suspending the intrastate rates named in the tariff last referred to, and, on March 30, published its new tariff, cancelling

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all rates between industries having private sidings on the Grand Trunk System and hold or team tracks on that system, and all rates between junction points with other carriers within the corporate limits of Detroit. The Grand Trunk team tracks were thereby withdrawn from all intracity, intrastate and interstate switching movements, except as to the Detroit & Toledo Shore Line, with which it was under contract for terminal switching. On April 10th the Commission suspended the last named tariff-supplement until May 25, 1912, to give the Commission opportunity to investigate its reasonableness. On April 12, two days after the making of the Commission's order suspending the tariff of the Grand Trunk System cancelling team track switching, the Grand Trunk Railway of Canada filed its bill in this cause, and on April 27th filed an amended bill. On the latter date the Detroit, Grand Haven & Milwaukee Railway Company filed its bill. A temporary restraining order was made in each case and is still in force.

204 Complainants and defendants seem to agree that the statutes in question should be interpreted as requiring complainants to receive and transport, at reasonable rates, all intrastate carload traffic offered for transportation under the usual conditions and falling within either one of two classes: first, such as is locally consigned between points in the same city or town, whether or not the same is received from another railroad; second, such as is offered at any junction or transfer point or intersection with another railroad within the city for delivery upon team tracks or sidings therein, whether or not the

shipment originated within such city or town. Defendants' brief discusses the case with reference only to such two classes. It is not entirely clear whether complainants regard as included a third class, viz.: such as is offered upon team tracks or sidings within a city for delivery to a junction or transfer point or intersection with another railroad therein, whether or not the ultimate destination of such shipment is beyond such city or town. We thus find it necessary to discuss the case with reference only to the first two classes of transportation.

1. The taking of complainants' property without due process is said to result because, as contended, the required services are merely switching services, as distinguished from transportation services. It is contended that intracity switching is beyond any obligation of complainants, and cannot be imposed by the Legislature; and that a carrier not incorporated particularly for such services cannot be required to allow another carrier the use of its terminals to do switching.

An imperative obligation resting upon railroads doing business within this state not only to furnish equal facilities for the transportation of passengers and freight to all railroads connecting therewith, but to make such track connections with connecting railroads as to permit the transfer from one to the other of loaded and unloaded cars designed for transportation upon both roads, has been too long imposed by statute and declared by the decisions of the courts to now permit of question. Such has been the settled policy of the State of Michigan for more than 30 years. By the amendment of 1879 (P. A.

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Mich. 1879, No. 207) to the General Railroad Act of 1873, express provision was made for compelling such union and connection of tracks under order of the Commissioner of Railroads. The Railroad Commission Act of 1873 (P. A. Mich., 1873, No. 79) contained the provision above quoted in this opinion as contained in the act of 1909, requiring railroads at reasonable times, and for reasonable compensation, to draw over their tracks the merchandise and cars
205 of any other corporation or individual having connecting tracks, with substantially the same provision for determination by the Commissioner of Railroads of the rate of compensation and the stated periods at which cars shall be so drawn, in case the respective railroads cannot agree thereon. Similar statutory provisions have existed ever since 1873.

In the year 1881, in a case in which a switchman sought to recover from a railroad company for injuries suffered in coupling freight cars received from another railroad, the Supreme Court of Michigan, speaking through Justice Cooley, said:

"The primary fact that must rule this controversy is that the Michigan Central Railroad Company is compelled to receive and transport over its road all the varieties of freight cars which are offered to it for the purpose and which are upon wheels adapted to its gauge. It is compelled to do so—first * * *. But third, the statute requires it. It is provided by General Laws 1873, p. 99, that 'every corporation owning a road in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation.' The necessities of commerce require this with such

imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the state to punish could hardly fail to be speedy and effectual." Michigan Central R. R. Co. vs. Smithson, 45 Mich., 212, 221.

In Michigan Railroad Commission vs. Michigan Central R. R. Co. (1911), 132 N. W., 1068, the Supreme Court of Michigan held valid and enforceable a provision of the Michigan Railroad Commission Act of 1907 similar to that contained in the 1909 Act before the amendment of 1911, empowering the Railroad Commission to require railroads to interchange cars, freight and passenger traffic, and to require track connection upon such terms as it may determine, and sustained the order of the Commission requiring such connection and interchange of traffic between a steam railroad and an electric interurban road. That requirements of track connections and interchange of traffic between railroads, imposed by the Michigan statutes previous to 1911, do not amount to the taking of property without due process needs no extended reference to authority. Mich. Railroad Commission vs. Mich. Central R. R. Co., supra; Wisconsin, Etc., Ry. Co. vs. Jacobson, 179 U. S., 287; Minneapolis & St. Louis R. R. Co. vs. Minnesota, 186 U. S., 263.

If, therefore, the requirement of the services here in question offends against the due process clause of the constitution, it must be because such required services are not in a proper sense transportation, but are essentially distinguishable therefrom.

The nature and classification of this service may

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best be appreciated by considering the conditions to which it is sought to apply the orders of the Commission here in question. Detroit is a city of about 500,000 population. It has a large number of industries and is served by a large number of railroads. For the purpose of facilitating the loading and unloading of freight each of these railroads has established a greater or less number of team or "hold" tracks, and many of these industries are provided with sidings. These "hold" tracks, team tracks and industrial sidings are within what are called the switching limits of Detroit. It is stated in defendants' brief, and without contradiction, that the so-called switching district of Detroit extends for a distance of about 22 miles. Such tracks are necessary to prevent the congestion which would result from requiring all carload freight, both in and out, to be delivered at the freight depots of the respective roads, and in a very proper sense are shipping stations. In Railroad Commission vs. St. L. I. M. & S. Ry. Co., 24 I. C. C. Rep. at p. 294, it was said of team tracks: "They are analogous to freight depots in that they bear the same relation to carload freight that such depots bear to less than carload freight."

By Section 6 of the Railroad Commission Act of 1909, switching connections with private sidetracks are required. By Section 13a the requirement is made of suitable freight depots, buildings, switches and sidetracks; and the Commission is empowered to make such orders requiring the same, including "other track accommodations," as it is deemed for

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the public interest and as shall be just and reasonable.

Setting to one side the question of the requirement of interchange of traffic between connecting roads, the statute, in our opinion, validly empowers the Commission to require local transportation by a railroad between its own shipping stations within a city, whether such plurality of shipping stations has been voluntarily established by the railroad, as here, or has been required by the Commission under its lawful powers, and provided such transportation is for such substantial distance and of such a character as reasonably to require a railroad haul, as distinguished from other means of carriage. It is also clear that a statute validly may, and that the
207 statutes we are considering do authorize the employment of such depots, sidetracks, and team tracks of a railroad for transporting carload freight to or from the junction of such road with another road as a substantial part of a continuous transportation routing, where such junction is outside the city limits. Does the fact that such junction is within the city limits necessarily differentiate the two classes of services so as to make the one a transportation within the meaning of the law and the other a mere switching service? And this in view of the fact that the distances between the city depots and tracks of a railroad and its intracity junction with another road may be as great as between such city depots and tracks and junctions outside the city, or as great as the average distance between extracity freight stations in a fairly populous section. Or does the fact that such freight movement begins and ends within

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the limits of a city necessarily characterize its movement between junction point and the station of receipt or delivery as a switching transaction rather than as part of an actual transportation between two termini; that is to say, between the place where the movement begins and the place where the movement ends? Upon principle, there seems no necessary distinction with respect to either of the two cases suggested. In either case the shipper is not necessarily doing more than exercising the right of routing shipments between point of shipment and point of delivery. The cases relied upon by complainants are not, in our judgment, decisive of the question here presented. In Stockyards Co. vs. Louisville & Nashville Ry. Co., 192 U. S., 568, it was held that neither the interstate commerce act of 1887 nor the provisions of the Kentucky constitution which required railroad companies to receive, deliver, transfer and transport freight from and to any point where there is a physical connection between the tracks, imposed an obligation upon a railroad having its own city stockyards, under a lease from a stockyards company, to accept live-stock from other states for delivery at the stockyards of another railroad in the same neighborhood, although there is physical connection between the two roads. That case differs from the one before us in these respects: There was in that case no statute in terms requiring the transfer in question; the constitutional provision was construed as referring to a case where the freight was destined to some further point by transportation over a connecting line. The statute before us permits no such construction. It is true that in

the stockyards case it was said of the constitutional provision referred to that—"It cannot be intended to sanction a snatching of the freight from the transporting company at the moment and for the purpose of delivery. It seems to us that this would be so unreasonable an interpretation of the section that we do not find it necessary to consider whether under any interpretation it can be sustained." But the basis of the decision seems to be that there was neither requirement of public law nor of private contract that the railroad company should deliver its own cars to another road, and that delivery would accordingly have to be made either by unloading or by the surrender of the defendant's cars; and that the courts have no authority to dictate a contract to the defendant or to require it to make one. This objection again does not pertain to the case before us. The case was treated "as an ordinary case of stations at substantially the same point of delivery, and, therefore, as one to be dealt with as if they were side by side." The court, moreover, said—"It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might be regarded as bona fide further transportation over a connecting road and within the requirements of the Kentucky constitution."

In Louisville & Nashville Ry. Co. vs. West Coast Etc. Co., 198 U. S., 483, it was held that a common carrier may agree with such other carrier as it may choose to forward beyond its own line goods it has transported to its terminus; and if it has adequate terminal facilities at a seaport sufficient for all freight destined for that place, it is not obliged to

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allow other and competing carriers to load and discharge at wharf owned by it and erected for facilitating the transportation of through freight to points beyond that place. This case differs from the instant case in these respects: It involved a wharf which was held in a proper sense to be private, and it was said that the defendant "never became a common carrier, as to this wharf, in the sense that it was bound to accord to the public or to plaintiff a right to use it upon payment of compensation." It was further said that the wharf was "not in strictness the terminus of defendant for unloading its goods." The objection urged in that case that the commerce of the country would be cramped, if not damaged, by the uncertainty of finding quarters for the prompt loading and unloading of vessels, is guarded against in the Michigan statute by the provision authorizing the Commission to determine the rate of compensation and to fix the periods at which cars should be drawn, and by the provision contained in the proviso of section 7d for guarding against congestion.

209 The case of Louisville & Nashville Ry. Co. vs. Stock Yards Co., 212 U. S., 132, was similar to the case referred to as reported in 192 U. S., 568. In the case reported in the 212th United States the same condition existed as in the case earlier referred to, in that there was no statute providing machinery for carrying out the provisions of the Kentucky constitution; and it was held that in order to deliver as demanded the railway "would have been compelled either to build chutes or to hand over its cars to the Southern Railway"; and that in the absence of statute or con-

tract there was no power to compel such action. The court again expressly refrained from saying that a valid law could not be passed requiring the delivery by a railroad of its cars to another railroad. The attempt was made in that case to compel the use of the railway terminals "upon simply paying for the service of carriage," a condition which does not exist here. The action was also construed as an attempt to compel the railroads to deliver cars elsewhere than at its own terminals, while in the case before us delivery is attempted to be enforced only at places which the railroad company holds are parts of its terminal facilities. All three of the cases referred to arose previous to the 1906 amendment of the Interstate Commerce Act providing for compulsory through routing and rating.

In Railroad Commission vs. St. L. I. M. & S. Ry. Co., supra, it was held by the Interstate Commerce Commission that a railroad was not required to switch a car containing an interstate shipment of coal from another line connection in the city of its delivery to its own team track for unloading by the consignee, there having been no tariff charge provided therefor; but that such switching could be required between connections with other lines and industries located on defendant's tracks, as to which last service a tariff charge was provided. In the opinion it is said (p. 295): "Switching to an industrial track is a service for which a regular tariff charge is frequently made by carriers and is over tracks and spurs as to which the cost of construction is generally borne in part by owners of the plants to which they extend. Team-track delivery is

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a service rendered by carriers in receiving and delivering carload freight in connection with their own line business and is over tracks owned by the carriers. It is a service for which no separate tariff charge is provided and which is analogous to freight-depot service for less-than-carload freight. A freight depot owned and maintained by a carrier is a terminal facility for use in handling business from its own line and can not, under section 3 of the statute,
210 be used for handling business from other lines without its consent."

It will be noted that this decision is based upon two propositions, first, that the statute does not provide for the service, and, second, that no separate tariff charge is provided. The first ground assigned does not apply in the instant case, because the statute expressly requires it. We see no reason why the Commission cannot, under the Michigan statute, require a tariff charge for such service in connection with, and as part of, transportation by way of through routing.

We find nothing in the propositions decided in United States vs. Terminal Railroad Association (32 Sup. Ct. Rep., 507) or in State vs. Terminal Railroad Association (182 Mo., 284) opposed to the validity of the legislation we are considering. The case of Chicago, I. & L. Ry. Co. vs. Railroad Commission (95 N. E., 364) decided by the Supreme Court of Indiana, sustaining a statute in many respects similar to that before us, is well in point upon the question of due process, as well as upon certain of the other questions here involved.

The section of the Michigan statute here involved

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relates by its terms to transportation, and the defendants seek to sustain the validity of the statute with respect to the services in question upon the sole ground that they do in fact constitute transportation. While we do not say that there may not be cases distinctively of switching or team track delivery which do not amount to transportation, in our opinion, a service calling for the use of the so-called terminal facilities of a connecting railroad does not lose what would otherwise be the quality of transportation from the mere facts either that the movement begins and ends within the switching or corporate limits of a city, or that the transportation is only between an intracity junction and team track or sidetrack. Whether a given service is delivery as incidental to and as a part of a transportation in which the delivering carrier has substantially participated, or is a delivery incidental only to a "transportation" which has been wholly performed by another carrier, is, at the last, a question of fact, to be determined in the given case as it may arise.

The conclusion we reach is that the imposing upon complainants of the duty of transportation prescribed by the statute, as we have interpreted it, is not sufficient to constitute a taking of complainants' property without due process of law. Questions relating to quality and reasonableness of service, and compensation therefor, are primarily addressed to
211 the Commission, subject to the statutory authority of revision conferred by the Act upon the State courts. No case of threatened abuse of its powers on the part of the Commission is presented.

But it is urged, and the ex parte affidavits of com-

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plainants' representatives tend to show, that the performance of the class of services in question would tend to congest complainants presently existing terminals; and thus interfere with the proper handling of the traffic; that during the period in which such services were furnished more or less congestion did result; that sufficient vacant land cannot be acquired for the necessary enlargement of such terminals; and that to acquire lands now occupied would cost several hundred thousand dollars. So far as concerns the expense of enlarging and extending complainants' track facilities, it would seem that if complainants could otherwise lawfully be required to provide the service in question, such obligation could not be avoided because attended with considerable expense. As respects temporary congestion pending such extension of facilities, we would not be warranted, upon ex parte affidavits, in enjoining the enforcement of the statute, especially in view of the powers given the Commission toward preventing congestion, and in view of the fact that the service seems not to have been discontinued by reason of such congestion, but immediately because of the controversy over rates.

2. The alleged violation of the commerce clause of the federal constitution rests upon the argument that the enforcement of the statute and the orders referred to will necessarily result in congesting the terminal facilities of complainants, and thus make it impossible for them to carry on interstate business without seriously delaying and interfering with such commerce. The statute does not embrace interstate commerce. It is confined to intrastate business. It has been so construed by the Supreme Court of Mich-

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igan. Mich. Central R. R. Co. vs. Michigan Railroad Commission, supra. The statute cannot be said to interfere with interstate commerce unless such is its direct, immediate and necessary effect. Louisville & Nashville R. R. Co. vs. Kentucky, 161 U. S., 677, 701; Louisville & Nashville R. R. Co. vs. Kentucky, 183 U. S., 503, 518. It is not, and cannot be claimed that such effect results as matter of law, that is to say, it can only result because and when it is established by proofs that such is in fact the direct and necessary result of the enforcement of the act and the orders of the Commission. What has already been said respecting the congestion of complainants' existing terminals, in considering the question of due
212 process, is equally pertinent to the objection of interference with interstate commerce.

3. The statute is assailed as unconstitutional on its face, as denying the equal protection of the law because imposing, as alleged, such severe penalties for disobedience of its provisions as to deter parties affected thereby from testing its validity in the courts. Ex parte Young, 209 U. S., 123, is relied upon to support this contention. But without regard to the question whether the penalties provided by this statute are so excessive as to be void, it is sufficient to say that we have not before us an action for the recovery of penalties; that the penalties are embraced in a section by themselves, and thus plainly separable from the provisions here involved; and the question of the constitutionality of the penalty clause may properly be left to be determined should an effort be made to enforce the same. Wilcox vs. Consolidated Gas Co., 212 U. S., 19, 53-54; United States

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vs. Delaware & Hudson Co., 213 U. S., 366, 417; Gremada Lumber Co. vs. Mississippi, 217 U. S., 433, 443.

4. Subdivision "a" of section 7 of the statute declares that "nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

It is urged that to require a carrier to receive or transport over its tracks the merchandise and cars of any other corporation or individual having connecting tracks is to require it to give the use of its tracks and terminal facilities to another railroad engaged in like business, and that the act is thus so inconsistent and uncertain as to be utterly null and void. We think the two provisions in question can be so construed as to give effect to both.

The provisions in subdivision "a" above referred to was contained in the Act of 1907, construed by the Supreme Court of [in] Michigan Central R. R. Co. vs. Michigan Railroad Commission, supra, in which case (although the provision in question in subdivision "a" was not referred to in the opinion) the court upheld the provision requiring interchange of traffic and track connections, including the transporting of cars from another railroad. Moreover, subdivision "d" was enacted by way of amendment subsequent to the original adoption of subdivision "a". If either provision were required to give way, it would seem that the latter would prevail.

5. The orders entered by the Commission are denounced as void because made in proceedings to which complainants were not parties. Neither com-

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to enforce its subsisting order of April 10th without making complainants parties to the proceedings in question; the allegation being that the Commission "gives out and threatens that it will make orator a party to said proceedings brought by said John S. Haggerty, and to said order entered therein (referring to order of April 10th), and to all proceedings under said suspension of said last named tariff," and that it will require complainants to continue local switching business and to allow the use of its terminals for the purposes hereinbefore stated. Moreover, the order of April 10th simply postponed the tariff cancelling team track switching, to give the Commission an opportunity to investigate its reasonableness, and it does not appear that such further investigation has been had. In spite, therefore, of later allegation of threatened injurious action, we would not be justified in assuming that the Commission would attempt to or could do anything to complainants' in-
214 jury under the order of April 10th without further impleading, investigation and hearing.

It follows from what has been said that the application for interlocutory injunction should be denied, and the existing restraining order vacated. As the questions presented are important and review may be desired, the formal entry of the orders in accordance with this opinion will be withheld until September 5th next, to give complainants opportunity to present such applications as they may desire for a continuance of the restraining order pending appeal (under the rule stated in Hovey vs. McDonald, 109

U. S., 150, 161, and Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79, 80) in case such appeal is to be taken.

Approved:

LOYAL E. KNAPPEN,
Circuit Judge.

ARTHUR C. DENISON,
Circuit Judge.

J. E. SATER,
District Judge.

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5 ORDER AND STIPULATION ON MOTION FOR INTERLOCUTORY INJUNCTION.

(Filed September 17, 1912.)

THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

Grand Trunk Railway Company of Canada,
Complainant,
vs. No. 5471.
Michigan Railroad Commission, et al.,
Defendants,
and
Detroit, Grand Haven & Milwaukee Railway Company,
Complainant,
vs. No. 5476.
Michigan Railroad Commission, et al.,
Defendants.

These causes coming on to be heard after due notice according to law, upon the application each of the complainants for an interlocutory injunction

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herein, and for a continuance of the restraining order heretofore granted in these causes and the court having considered the pleadings in these causes and the affidavits and exhibits filed by the respective parties in these causes and having heard the arguments of counsel and being fully advised in the premises, it is ordered, adjudged and decreed by the court that the said motions for said interlocutory injunction and for a continuance of the restraining orders heretofore entered herein, be and the same are hereby denied, and it is ordered that for the purposes of an appeal to the Supreme Court of the United States of said causes from this order, that said causes be and are hereby consolidated and upon motion of complainants an appeal is allowed from said orders denying said motions for said interlocutory injunctions and for a continuance of said restraining orders to the Supreme Court of the United States upon said complainants, within ten days from this date,
216 filing their appeal bond herein, conditioned, according to law, in the penal sum of $100,000.00 and the temporary restraining orders heretofore issued in these causes are continued in force pending said appeal, and leave is also given complainants to file their certificates of evidence herein within thirty days from this date.

LOYAL E. KNAPPEN,
Circuit Judge.

ARTHUR C. DENISON,
Circuit Judge.

J. E. SATER,
District Judge.

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It is hereby stipulated by and between the parties of the above entitled causes by their respective solicitors that the above order be entered therein on condition that the appeal of said causes to the Supreme Court of the United States be perfected so that these causes will be placed on the docket of the coming October Term of said Supreme Court, this stipulation being entered into because of the necessity for a final determination of said causes at the earliest possible date.

Dated Aug. 31st, 1912.

L. C. STANLEY,
KRETZINGER & KRETZINGER,
Solicitors for Complainants.

FRANZ C. KUHN,
Solicitor for Defendants.

GEORGE S. LAW,
EDWARD WAER,
Of Counsel for Defendants.

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7 Petition of Grand Trunk Railway Company of Canada for appeal.

8 Petition of Detroit, Grand Haven & Milwaukee Railway Company for appeal.

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ASSIGNMENT OF ERRORS.

(Filed September 17, 1912.)

In the Supreme Court of the United States.

To the October Term, 1912.

Consolidated Causes Nos. 5471 & 5476. In Equity.

Grand Trunk Railway Company of Canada,

vs.

Michigan Railroad Commission, et al.

Detroit, Grand Haven & Milwaukee Railway Company,

vs.

Michigan Railroad Commission, et al.

Appeal from District Court of the United States for the Eastern District of Michigan, Southern Division.

Now comes the Grand Trunk Railway Company of Canada and Detroit, Grand Haven & Milwaukee Railway Company, complainants in the above causes as consolidated, and say that there is manifest error on the face of the record in this, to-wit:

1. The court erred in denying the motion of the complainants for an interlocutory injunction in the above entitled causes as consolidated, as prayed for in said bills of complaint, as amended.

2. The court erred in denying the motion of complainants for a continuance of the restraining orders heretofore entered in the above entitled causes as consolidated.

Wherefore complainants pray that the interlocu-

tory decree aforesaid be reversed by reason of the foregoing errors and that they may be restored to all things which they may have lost by reason of said interlocutory decree.

KEITZINGER & KEITZINGER,
L. C. STANLEY,
Solicitors for Complainants.

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20 Order consolidating causes, allowing appeal and fixing bond at $100,000.
21 Citation.
22 Appeal bond.
24 Stipulation number 1 as to contents of record on appeal.
26 Stipulation number 2 as to contents of record on appeal.
27 Order extending time to file and docket printed record on appeal.
28 Certificate of Clerk.

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IN THE SUPREME COURT OF THE UNITED STATES.

Office Supreme Court, U. S.
FILED.
MAY 24 1913
JAMES H. McKENNEY,
CLERK.

GRAND TRUNK RAILWAY OF CANADA, and the DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,

Appellants,

vs.

MICHIGAN RAILWAY COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEAMANS, GEORGE W. DICKINSON, and FRANZ C. KUHN, Attorney General of the State of Michigan,

Appellees.

No. ~~858~~ 382.

MOTION OF APPELLEES TO ADVANCE SAID CASE UPON THE DOCKET.

GRANT FELLOWS,
Attorney General of Michigan.
HAL. H. SMITH,
Solicitors for Appellees.

BEAUMONT, SMITH & HARRIS,
Of Counsel.

DETROIT:
CONWAY BRIEF CO., 143-150 LAFAYETTE BOULEVARD
1913.

IN THE SUPREME COURT OF THE UNITED STATES.

GRAND TRUNK RAILWAY OF CANADA, and the DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,

Appellants,

vs.

MICHIGAN RAILWAY COMMISSION,
CASSIUS L. GLASGOW,
LAWTON T. HEAMANS,
GEORGE W. DICKINSON, and
FRANZ C. KUHN, Attorney General of the State of Michigan,

Appellees.

MOTION OF APPELLEES TO ADVANCE SAID CASE UPON THE DOCKET.

To the Honorable Supreme Court of the United States.

Now comes the Appellees aforesaid by their solicitors and counsel, Honorable Grant Fellows, Attorney General of the State of Michigan, and Hal H. Smith, and moves the court that the said cause be advanced upon the docket of said honorable court.

BRIEF STATEMENT OF MATTER INVOLVED.

The following is a brief statement of the matter involved in said cause:

The said case is consolidated from two causes in which the bills of complaint were filed by the Grand Trunk Railway Company and the Detroit, Grand Haven & Milwaukee Railway Company.

The bills of complaint prayed that certain orders of the Michigan Railroad Commission be declared void and their enforcement restrained. They recited in substance as follows:

July 20, 1911, the complainants issued a certain tariff (M. R. C. 236) which prescribed a charge for the service of complainants for switching cars either loaded or unloaded from or to other carriers than the complainants in the corporate limits of Detroit, when such cars were switched to public team tracks, of ($3.00) three dollars in excess of the charge for switching such cars to private tracks or industrial sidings, making a charge of $5.00 for such industrial sidings and $8.00 for such public team tracks.

Thereafter one John S. Haggerty complained to the said Commission alleging said charge as made by the Grand Trunk Western Railway to the public team tracks to be unreasonable and discriminatory. Upon the hearing of such complaint said Commission held said charge to be unreasonable and discriminatory and directed the said Railroad to publish tariffs and make effectual a charge for switching to public team tracks which should be the same as the charge for switching to the industrial sidings and also directed said Grand Trunk Western Railway to make the same charge for switching a car received from a connecting carrier as was made when a car was received from an industry on the Grand Trunk Western Railway. The Grand Trunk Western Railway is a part of the Grand Trunk Railway System, of which the appellants are likewise a part.

After the making of this order, the Michigan Railroad Commission, which includes the complainants and appellants here, issued a new tariff in which it fixed the following charges for switching, viz;

Between industrial tracks on the said System....	$5.00
Between junction points with connecting carriers and industrial tracks.....	5.00
Between team tracks on said System.....	8.00
Between junction points with connecting carriers and team tracks on said System.....	8.00

On March 14, 1912, said John S. Haggerty filed a supplemental petition with the Michigan Railroad Commission charging in substance that said charges in said last tariff were unreasonable. The said Commission thereupon issued its order suspending said tariff to April 29, 1912.

On March 30, 1912, the Grand Trunk Railway System issued a new tariff (Supp. 6 to M. R. C. 236) by which it cancelled all rates in the former tariffs for switching cars to or from team tracks on said System (except between the Shore Line, an associated Company, and such team tracks) in said City of Detroit and said team tracks were withdrawn from all switching movement except as above.

The said bill of complaint alleged that such team tracks are the private property of the complainant and that complainant was not required to haul to and from connecting carriers to and from such team tracks.

Thereafter, the Michigan Railroad Commission did suspend this tariff and intended to endeavor to compel the said Grand Trunk Railway System to allow the use of said team tracks and its terminals to receive from, transfer for, or deliver cars to or from other carriers having terminals in Detroit.

Thereupon, the complainant, or appellant, filed its bill of complaint in the District Court of the United States, Eastern District of Michigan, Southern Division, reciting the aforesaid proceedings and charging

1. That the Acts No. 139 of 1911 and No. 300 of 1909 of the State of Michigan, under which the said Michigan Railroad Commission had acted, were unconstitutional in so far as they authorized the Commission to require the Railroad to receive and transfer cars to and from the public team tracks.

2. That the Commission had no jurisdiction to make the orders above referred to.

3. That said orders were void as to the complainant.

Said bill of complaint prayed for an interlocutory injunction.

To this bill of complaint the Commission answered, insisting on its jurisdiction and that the orders and the charges prescribed therein were just and reasonable.

The application for the interlocutory injunction was heard before Judge Knappen, Denison and Sater and on August 5th, 1912, their opinion was filed, sustaining the orders of the Commission. Thereafter an order was entered denying the motion for the interlocutory injunction.

The restraining orders which had been made upon the filing of the bill of complaint were, however, continued in effect upon the giving by the complainant of a bond for $100,000.

This order was the subject of a stipulation between the parties as follows:

"It is hereby stipulated by and between the parties of the above entitled causes by their respective solicitors that the above order be entered therein on condition that the appeal of said causes to the Supreme Court of the United States be perfected so that these causes will be placed in the docket of the coming October term of said Supreme Court, this stipulation being entered into because of the necessity for a final determination of said causes at the earliest possible date.

Dated August 31, 1912.

L. C. STANLEY,
KRETZENGER & KRETZENGER,
Solicitors for Complainant.
FRANZ C. KUHN,
Solicitor for Defendants.
GEORGE S. LAW,
EDWARD WEIL,
Of counsel for Defendants.

Under this order the bond was filed and the tariff of the complainant under which it withdrew all rates and charges for switching service to team tracks is in effect.

There being no tariff covering this service, the service is refused and no cars from or to connecting carriers are switched by the Grand Trunk Railway System to or from its team tracks within the switching limits of the City of Detroit, Michigan, except as to the Shore Line, a carrier associated with the Grand Trunk Railway System.

THE REASONS FOR THIS APPLICATION.

The reasons for this application are that the delay in the hearing of said case is causing great inconvenience and loss to the shippers and receivers of freight in Detroit, Michigan, and to the public in general.

(a) The excess charges of $3.00 per car which the shippers and receivers of freight in Detroit are compelled to pay upon cars handled between the D. & T. S. L. R. R. (the Shore Line) and the hold or team tracks of the Grand Trunk Railway System will, if the delay is prolonged, exceed the amount of said bond.

(b) The refusal of the Grand Trunk Railway System to switch to its team tracks, cars arriving from other car-

riers is seriously inconveniencing the shippers and receivers of freight in Detroit, Michigan, and preventing the hauling of freight therein, restricting the commerce and business thereof.

(c) That such refusal is preventing the movement of cars to Detroit over the lines of carriers other than the Grand Trunk Railway System destined to receivers of freight situated adjacent to public team tracks on the lines of said Grand Trunk Railway System in Detroit, Michigan.

(d) That such refusal is causing great expense to receivers of freight who have no private sidings or industrial tracks in the City of Detroit by reason of the fact that they are compelled to accept delivery of such freight upon the team tracks of carriers other than the Grand Trunk Railway System from which team tracks said receivers of freight must haul said freight at an expense greatly in excess of the cost of such haul if said cars had been delivered upon the public team tracks of the said Grand Trunk Railway System.

(e) That such refusal is causing the diversion of freight originating at points served by the Grand Trunk Railway System and other carriers which would otherwise move to Detroit over the lines of such other carriers but which because of said withdrawal of said tariff will be diverted to the Grand Trunk Railway System to secure a delivery at a Grand Trunk public team track in Detroit.

(f) That such refusal is causing serious loss to the receivers of commodities such as lumber in Detroit where such commodity originates on the lines of carriers other than the Grand Trunk Railway System and receives milling in transit while en route over the lines of such carrier to Detroit. If the transportation of such commodity be diverted to the Grand Trunk Railway System at the point where milling in transit is performed, the shipper or receiver of such freight must lose the milling-in-transit privilege and pay a higher rate made up of the local rate to such milling-in-transit point and the rate from said point to the City of Detroit. If on the other hand such milling-in-transit privilege is retained the freight must move from the transit point over the line of the originating carrier and delivery then cannot be made upon the Grand Trunk Railway System team tracks in Detroit to the great expense of the receiver of the freight in Detroit.

(g) The citizens of the City of Detroit are conducting building operations upon an extraordinary scale and are using therein commodities such as brick, crushed stone, cement, gravel, sand, tile and lumber. These commodities

are uniformly delivered upon team tracks adjacent as far as possible to the place where such building operation is to be conducted. The withdrawal of said Grand Trunk System tracks from use so far as such commodities are concerned when they originate on the lines of carriers other than the Grand Trunk System is preventing the movement of the said building materials to the City of Detroit and restricting therefore, the growth of the City, both its industrial growth and the increased building of the residences and homes of its citizens.

(h) The refusal of the appellants to switch cars to or from their hold or team tracks in the City of Detroit denies to the shippers of freight destined to Detroit their right to route freight.

The affidavit of Arthur T. Waterfall is hereto attached as Exhibit A in support of the foregoing.

Your petitioner therefore respectfully moves the Honorable Court, the foregoing statement and reasons having been considered, that said cause be advanced upon the docket of said court and set for as early a hearing as shall be proper under the rules and according to the convenience of the Court.

Respectfully submitted,

GRANT FELLOWS, *Attorney General*
Of the State of Michigan.

HAL H. SMITH,
Solicitors for Appellees.

BEAUMONT, SMITH & HARRIS,
Of Counsel.

EXHIBIT A.

GRAND TRUNK RAILWAY OF CANADA, et al,
Appellants,
vs.
MICHIGAN RAILROAD COMMISSION, et al.,
Appellees.

STATE OF MICHIGAN }
} ss.
COUNTY OF WAYNE }

ARTHUR T. WATERFALL, being duly sworn, deposes and says that he is Traffic Commissioner of the Board of Commerce of Detroit, Michigan, and has been such Com-

missioner for one year last past. Prior to that time he had been Chairman of the Traffic Committee of the Board of Commerce for a period of ~~two~~ three years.

That as Chairman of said Traffic Committee and as Traffic Commissioner, he has made a thorough investigation of the terminal facilities in Detroit and of the number, extent and capacity of the public and private side tracks in said city of Detroit, and of the method of operating same, and of the quantity of the car-load traffic delivered to and from public team tracks upon the lines of the various railroads operating in Detroit, and upon the public team tracks of the Grand Trunk Railway System at said city of Detroit.

That he has made investigation as to the number of cars that are handled in the said city of Detroit between the Detroit & Toledo Shore Line Railroad and the hold or team tracks of the Grand Trunk Railway System, upon which cars an excess charge of Three Dollars ($3.00) per car, as referred to in the foregoing motion, is assessed; and while he, the said deponent, is not able to give an accurate statement of the number of cars that are handled daily between said roads, he can say that a considerable number of cars are so handled, particularly cars containing coal, of which commodity the Detroit & Toledo Shore Line Railroad Company is one of the largest, if not the largest, carriers to the said city of Detroit.

That this deponent would estimate that at least average cars per day are handled between the Detroit & Toledo Shore Line Railroad and the team tracks and hoid tracks of the Grand Trunk Railway System, and that, therefore, the excess charge on said cars, referred to in said petition, will greatly exceed, unless an early hearing be had, the amount of the bond filed in said cause.

Your deponent made a particular investigation of the effect of the tariffs, referred to in said motion, upon a list of fifty (50) shippers and receivers of freight in Detroit, Michigan, who handle approximately thirteen thousand (13,000) cars per year, of which number three thousand seven hundred and fifty (3,750) are handled by Grand Trunk team tracks.

That these receivers and shippers comprise generally the dealers in and users of builders' supplies of various kinds in the city of Detroit, and that the expense caused to these shippers by reason of the fact that by the tariffs referred to in the foregoing motion, deliveries on the Grand Trunk

public team tracks cannot be secured where the cars originate on other line carriers ranges from Eight Dollars ($8.00) to Twenty-five Dollars ($25.00) a car; and said expense arises by reason of additional team hauls from other tracks over and above the team hauls which would have been necessary if the said cars had been delivered on the Grand Trunk tracks adjacent to the points of final delivery of the product contained in said cars.

That an investigation of said car-load movement by your deponent of the said receivers and shippers of freight indicates that a greater number of said cars could be handled upon the team tracks of the Grand Trunk Railway System than are now handled thereon by reason of the said tariffs above referred to.

That your deponent estimates that the delivery of a large quantity of said building materials has been prevented by reason of the fact of the delivery thereof being restricted as in said tariffs provided. That in the case of a single shipper of paving materials, your deponent estimates that at least five hundred (500) car-loads of said material could not be delivered by reason of the restriction contained in said tariffs.

Your deponent further says that the restrictions contained in said tariffs have resulted to the knowledge of your deponent in compelling certain dealers in building and paving materials in said city of Detroit to limit their business insofar as the purchase of said materials is concerned to manufacturers and shippers thereof located upon the lines of the Grand Trunk Railway System at various points adjacent to the city of Detroit, and that where they have not found it possible to so limit their said purchases, they have been compelled to arrange that said shipments should be consigned to private tracks on the lines of the Grand Trunk Railway System in the city of Detroit, and thereafter to team said shipments from said private tracks to the works where the same were to be used in order to make deliveries thereof on terms which would permit the use of said material.

That by reason of said forced restrictions upon the use of materials and freight originating on other roads than the Grand Trunk Railway System but which must be used at points adjacent to team tracks of other carriers, or originating at points on other carriers and are to be used adjacent to team tracks of the Grand Trunk Railway System, competition between purchasers of such material at points on the Grand Trunk Railway System and purchasers at

points on lines of other carriers has been greatly restricted.

Your deponent further states that his investigation has disclosed the fact that the increased charge, by reason of said tariffs, has had a material effect upon the building operations, and had in at least one case of importance prevented construction work that otherwise would have been undertaken.

Your deponent further says that his investigation has also disclosed the fact that upon the movement of lumber into the City of Detroit from points in northern Michigan via stations where milling in transit is performed, the fact that delivery cannot be diverted to the public team tracks of the Grand Trunk Railway System, where the said lumber has originated upon the tracks of other carriers, has resulted in the increasing of the freight rates by reason of the fact that the receivers or shippers thereof have been compelled to pay instead of the lawful through rate on such shipments the sum of two local rates, i. e., the rate from the mill to the milling and dressing point on the line of said other carriers and the rate to Detroit on the Grand Trunk Railway System lines.

Your deponent further states that he has made some investigation of the extent of the building operations in the City of Detroit and of the quantity of the commodities in use therein such as brick, crushed stone, cement, gravel, sand, tile and lumber. The City of Detroit has increased in population in the last year to the extent of 52,000 people. That its population now approximates 600,000; that its population continues to rapidly increase. That during the year 1911 building permits were issued in the City of Detroit to the extent of $19,012,670. for new construction; that during the year 1912 building permits were issued to the extent of $25,588,170. for said new construction, and that during the year 1913, to the 1st day of May, building permits have been issued to the amount of $8,963,-415. At the same time many miles of new streets and sidewalks have been laid and the sewer and water mains of the city have been very widely extended to meet the extraordinary growth in population and industrial activity of the city.

That the Grand Trunk Railway System is one of the principal carriers serving the City of Detroit; that its tracks surround the inner portion of the city and that it furnishes railroad facilities to a large number of the greater industrial concerns of Detroit, as well as having a considerable number of public team tracks available for

the use of Detroit receivers and shippers of freight. That the withdrawal of said team tracks from the service connected with the handling of freight originating on or destined to other carriers than the Grand Trunk Railway System and roads associated with it, does, as your deponent knows from his own investigation of said conditions materially effect the hauling and receiving of freight in the City of Detroit destined to consignees or originated by consignors who do not possess private tracks therein.

Arthur T. Waterfall

Subscribed and sworn
to before me this 21st day of
May, A. D., 1913.

Sarah J. Sutaya

Notary Public, Wayne County, Michigan.

My Commission Expires Dec 16, 1916

Office Supreme Court, U. S.
FILED.
OCT 7 1913
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. ~~858~~. 382

GRAND TRUNK RAILWAY COMPANY OF CANADA, AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,
Appellants,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON and FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Michigan.

BRIEF AND ARGUMENT FOR APPELLANTS.

G. W. KRETZINGER,
G. W. KRETZINGER, JR.,
A. B. BROWNE
Solicitors for Appellants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 853.

GRAND TRUNK RAILWAY COMPANY OF CANADA, AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,

Appellants,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON and FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Michigan.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT OF FACTS.

On April 10, 1912, the Grand Trunk Railway Company of Canada (hereinafter for brevity referred to as the Grand Trunk) filed its original bill of complaint in the District Court of the United States in and for the Eastern District of Michigan (Abst., 2; Rec., 1), praying an injunction against the Michigan

Railroad Commission and the individual Commissioners thereof, and the Attorney General of said state, all named as defendants in said bill, to prevent said defendants from enforcing or attempting to enforce certain orders of said Commission and certain acts of that state under which said orders purported to have been made, as in violation of the Fourteenth Amendment to the Constitution of the United States and an interference with interstate commerce, and setting up facts to establish a violation of that amendment and of the commerce clause of the Constitution, interference with interstate commerce, and lack of authority in the Commission to enter and enforce said order, and of power in the state to demand the services alleged to be required under said statutes. Upon said bill, and an affidavit filed in support thereof, a temporary stay order was on that day entered against the defendants, in accordance with the terms of the prayer.

On April 27, 1912, the Detroit, Grand Haven and Milwaukee Railway Company (hereinafter for brevity called the Detroit Company) filed its bill and affidavit in support thereof, in the same court, against the same defendants, setting out similar facts and praying for similar remedies, and thereupon obtained a stay order against all of said defendants, in terms similar to that previously entered in favor of the Grand Trunk. The bill of the Grand Trunk Company was amended, July 12, 1912, and that of the Detroit Company July 30, 1912, and bills as amended were in both instances filed without prejudice to the stay orders already obtained. (Abst., 2; Rec., 1, 105.) These two causes were

afterwards consolidated by order of the District Court entered September 17, 1912, by stipulation, allowing appeal to this court. (Abst., 65; Rec., 220.) The facts set forth, the questions involved and the relief prayed were in all material points identical in the two bills, except as to the territory through which the lines of appellants run, and diversity of citizenship, which latter exists only in the suit first filed; and the allegations of the answers and the facts set up in the affidavits in support of both bills and answers are similar. The two suits, therefore, will be, throughout this statement of facts and argument, treated as one, except to point out the few points of difference.

The services here in controversy, required by the orders of the Commission complained of in the two bills (and particularly by the order of April 10, 1912, which is the only one now remaining in effect, as shown later) and provided, as claimed by said Commission, by the terms of statutes of the State of Michigan, under which it purported to have acted, are as follows (Abst., 8, 9; Rec., 8-9, 112-113):

1. That appellants shall be required to receive cars from another carrier at a junction point or physical connection with such other carrier within the corporate limits of the City of Detroit, for transportation to the team or hold tracks of appellants in the same city.

2. That appellants shall be required to place their cars on their team or hold tracks in said city, for loading, and thereafter deliver and turn over said cars to another carrier at a junction point with the lines of such other carrier within said city.

3. That appellants shall be required to perform the switching of said cars between such junction points with other carriers and the hold or team tracks of appellants, all in said city.

4. That appellants shall be required to allow the use of their team tracks or hold tracks for either loading or unloading cars at the end or beginning of any such movement.

5. That appellants shall haul cars between hold or team tracks on their own lines and other hold or team tracks on such lines, all within the corporate limits of the City of Detroit, or allow the use of their team tracks for any such movement, for the purpose of loading or unloading said cars at the beginning or end of such a movement.

6. That appellants shall haul cars between an industry on their own lines and any team or hold track on said lines, all within the said corporate limits of the City of Detroit, or allow the use of their team or hold tracks to any such industry.

7. That appellants shall be required to either receive cars from other carriers or deliver cars to other carriers at junction points with the lines of such other carriers within said limits, or to receive cars from or to deliver cars to said industries located within said limits where the beginning and conclusion of movements engaged in by appellants are both within said limits.

8. That appellants shall undertake, perform or take part in the business of intrastate switching or in any transportation movement from any point within the corporate limits of the City of Detroit to any other point within said limits, or to

allow the use of their terminal facilities, team tracks or hold tracks within such limits, for any such purpose.

9. That appellants shall be required to give or allow any service or uses above enumerated of their cars, team or hold tracks, or other terminal facilities, where such instrumentalities and facilities are employed in interstate commerce.

10. That they shall be required to give any of the services or uses above enumerated, where the evidence establishes the fact that the enforcement of such an order and the requiring of such services or uses would create interference with the interstate traffic of appellants, which constitutes a large portion of the traffic carried on by them out of and through the State of Michigan and the City of Detroit.

The principal facts as developed in the bills of complaint are as follows: Complainant, Grand Trunk, is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada and is a corporate resident and citizen of said Dominion. (Abst., 2; Rec., 1.) Complainant, Detroit Company, is a corporation of Michigan. (Abst., 2; Rec., 105.) The Michigan Railroad Commission is a body created under an act of said state, approved June 2, 1909, with power to sue and be sued. The Attorney General of the State of Michigan, made defendant hereto, is empowered and authorized under said act and under other acts in said state, to institute and prosecute all necessary actions or proceedings for the enforcement of the statutes and or-

ders herein complained of. (Abst., 2; Rec., 1-3, 105.)

The defendants are all residents of the State of Michigan. The amount involved in both suits exceeds the sum of $3,000 exclusive of interest and costs. (Abst., 2; Rec., 2, 105.)

Diversity of citizenship between complainants and defendants is averred in the Grand Trunk bill (Abst., 2; Rec., 1), and in both bills violation of the Fourteenth Amendment, interference with interstate commerce, and facts showing a violation of the commerce clause of the Constitution are set up. (Abst., 3; Rec., 1, 11, 12, 13, 15, 16, 17, 106, 112, 113, 116, 118, 119, 121, 122.) Complainants are railroad corporations owning, controlling or leasing lines of railroad in the State of Michigan. (Abst., 3; Rec., 2, 107.)

The main lines owned, leased or operated by the Grand Trunk extend from the City of Portland in the State of Maine, northwesterly to the City of Richmond in the Province of Quebec, and from the City of Point Levi in said province to said City of Richmond and thence in a general southwesterly direction to the Cities of Port Huron and Detroit in the State of Michigan. (Abst., 3; Rec., 3.)

The railroad of the Detroit Company extends from the City of Detroit to the City of Grand Haven, both in the State of Michigan, and said carrier owns and operates a car ferry from its terminals in said City of Grand Haven to the City of Milwaukee in the State of Wisconsin. Both these railroads carry on a state and interstate business, not only between the State of Michigan and the various states of the

United States, but also between the various states of the United States and the Dominion of Canada; a large part of the traffic over their lines is interstate and foreign commerce. (Abst., 3; Rec., 107.) They use, own and possess switch yards, sidetracks and team tracks at different points in the State of Michigan and particularly within the corporate limits of Detroit in said state, in the district known as the switching district of the City of Detroit, which said switch yards, sidetracks and team tracks are used in conjunction and in connection with their main line or lines and the tracks thereof and are for the sole and exclusive use of said complainants in the conduct of their business, and constitute facilities connected with their main lines or tracks for use in the transportation and interchange of the business carried over said main lines, for their own shippers and customers. (Abst., 4; Rec., 3, 107.)

Grand Trunk Western Railway (hereinafter for brevity called the Western Company) is a railroad corporation whose main lines run from the City of Port Huron in the State of Michigan to the City of Chicago, State of Illinois. None of its lines of tracks run to any point nearer the City of Detroit than a distance of sixty miles. A large part of the traffic of said company is interstate and foreign commerce. It connects with the lines of road of complainants and forwards traffic to the City of Detroit over their rails. (Abst., 4; Rec., 3-4, 107-8.)

The Detroit and Toledo Shore Line (hereinafter for brevity called the Shore Line) is a railroad corporation also engaged in state and interstate commerce, extending from the City of Toledo, Ohio, to

the City of Detroit, Michigan, having no terminals or terminal facilities of any kind in the latter city. The Shore Line uses for the purposes of its traffic in the City of Detroit the terminal facilities of the two complainants, under a certain agreement dated June 30, 1911 (Abst., 5; Rec., 4, 108-9); that agreement in paragraphs 1 to 11 thereof (Exhibit A, Abst., 18; Rec., 22, 24, 127, 129) grants the Shore Line equal rights and obligations in and to the use of the West Detroit yards.

The freight terminals of complainants in Detroit are judiciously located and properly equipped and constructed with reference to the business of the country and that to be reasonably expected; they represent in the case of each complainant a value of more than one million dollars and could not be replaced for that sum. The team tracks of each complainant in said city represent an actual and fair value of many thousands of dollars expended for lands and tracks, and could not be reproduced for many times the sum originally expended; the cost of acquiring the ground and constructing team tracks sufficient for the accommodation of cars and traffic that would in the ordinary course of time be delivered to complainants by other lines and industries along the lines of other roads in the City of Detroit, if complainants are required to allow the use of their team tracks for the purpose of local switching within said city, and from and to such other roads and industries, would not be less than many hundreds of thousands of dollars. The industrial sidings or tracks from industries on or near complainants' lines in said city, were constructed and built, and

are maintained, either directly or indirectly, by the particular industries accommodated by such tracks; whereas, the team tracks of complainants are laid out on ground acquired at great cost, and were constructed and are maintained by them at great expense. (Abst., 5, 6; Rec., 4, 5, 109, 110.)

The Grand Trunk Railway System (hereinafter for brevity called the Grand Trunk System) is made up of a number of railroad lines, among them the two complainants and the Western Company; said lines are lines either under a common management or with a common interest and are not lines which compete with or run parallel to each other. The local tariffs, both state and interstate, under which switching is performed by complainants within the corporate limits of the City of Detroit, are issued under the name of this system. (Abst., 6; Rec., 5-6, 110.)

On or about the twelfth day of September, 1911, one John S. Haggerty filed his petition against the Western Company impleaded as the Grand Trunk Railway Company, alleging (among other things) that the rates for switching services published in certain tariffs of said system then in force and known as "M. R. C. No. 236," etc. (Exhibit C, Canadian bill, Abst., 20; Rec., 37; Exhibit B, Detroit bill, Abst., 20; Rec., 152), alleging, among other things, that the rates for switching services published in said tariff were unreasonable and resulted in discrimination against the user of team tracks of the defendant (Western Company) to the extent of the difference of $3.00 per car, which sum was charged for the use of the team tracks of complainants for

loading or unloading shipments received from or for delivery to other carriers at junction points with such other carriers within the City of Detroit. (Abst., 9-10; Rec., 9, 113-114.)

The Commission entered its order, dated February 6, 1912, requiring said Western Company to remove said alleged discrimination and to publish and make effective like charges for the movement of carload shipments between industries and team tracks on the Grand Trunk System, and between industries on the lines of other carriers and team tracks of said system, all within the limits of the City of Detroit (Abst., 11, 69; Rec., 10, 114-115, 163); and a subsequent order was entered by said Commission, under a supplemental proceeding by said Haggerty, dated March 15, 1912 (Exhibit F, Abst., 13, 25; Rec. 13, 73, 118, 167), suspending a subsequent tariff of said System. These orders are alleged in the bills to be unconstitutional and void for the reason, among others, that they had been directed against the Western Company, which did not own the tracks affected by that order, those tracks being owned or operated by complainants, who had not been made parties to said proceedings or been heard therein. Those orders were, after the filing of this bill, cancelled by the order of the Commission, dated September 14, 1912 (Defendant's Exhibit A, Abst., 30; Rec., 91, 185), as having been directed against the Western Company, which did not own the tracks affected by the order, those tracks being owned or operated, as set up in this bill, by the complainants.

Thereafter, the Grand Trunk System published

its tariff, dated March 30, 1912, entitled Supplement No. 6 to M. R. C. No. 236, etc. (Exhibit H, Abst., opposite p. 28; Rec., 78-9, 172-3.) Under the terms of said tariffs all rates between industries having private sidings on the Grand Trunk System, including the lines of complainants, and hold or team tracks on said system, and all rates between hold or team tracks on said system and other hold or team tracks on said system, all within the corporate limits of the City of Detroit, and all rates between junction points of complainants with other carriers within the said corporate limits and the team tracks of complainants, were cancelled, and said team tracks withdrawn from all intrastate, interstate and intracity switching movements. A single exception was made as to the Shore Line, and only there where the traffic originated at or was destined to points beyond the boundaries of the switching district of said city upon which the Shore Line received a revenue or road haul to or from West Detroit in said city. This exception was required by the contract between the Shore Line and the Grand Trunk, referred to above in this statement, which, under paragraphs 1 and 11, gave an equal use of these terminals for the interchange of cars to the Shore Line. The bills aver that while the team tracks are the private property of complainants, which they are not required to allow to other carriers for any of the services sought to be required by the Commission under the orders here complained of (including the order of April 10 set forth below), they yet have the right to allow the use of such team tracks to other car-

riers under such conditions as they may deem proper; that they have the right to allow the use of their terminal facilities to said Shore Line, which has no terminal facilities within the corporate limits of the City of Detroit, upon such terms and conditions as to them may seem just and reasonable; that said allowance of the team tracks of complainants with the Shore Line is required by the contract between them, as shown above. (Abst., 12-13; Rec., 13-15, 118-119.)

The last named tariff was suspended by the Michigan Commission by its order dated April 10, 1912. (Defendant's Ex. B., Abst., 30; Rec., 92-3, 186.) The bill avers that said Commission threatens and gives out and has threatened and given out that it will require the complainants to give the use of their team tracks to industries on their own lines within the switching or corporate limits of the City of Detroit and to other railroads connecting with complainants at junction points within such switching or corporate limits of the City of Detroit, and to industries on the lines of such other railroad companies, on rates and conditions to be fixed by said Michigan Commission and similar to or equal to the rates at which complainants perform other switching service, and will require complainants to continue such local switching business and to allow the use of their terminals to or to receive from, transfer, forward and deliver cars to other carriers at junction points with such other carriers in local movements to or from said city to and from complainants' hold or team tracks within said city (Abst., 14; Rec., 15-16, 120); that the Commission will so require is ad-

mitted in their answers to the two bills. (Abst., 29; Rec., 88, pars. XVII, XVIII; Rec., 89, par. XXI; Rec., 182, pars. XIX, XX; Rec., 183, par. XXIII.)

These orders of the Commission were entered into in reliance on and under the supposed authority conferred by a certain act of the Legislature of the State of Michigan, known as Act No. 139 of 1911, amending Act 300 of 1909; particularly in reliance on Section 7, sub-section (d).

These sub-sections, as well as the other sections of those acts material to the issues or referred to in the argument, are given in the footnote.*

Section 7 of Act No. 300, Public Acts of 1909:

"(a) All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: *Provided*, Precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. * * *

"(b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine;

"(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: *Provided*, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for trans-

That the Commission issued these orders under the supposed authority of sub-section (d), is apparent from the affidavit of its chairman, Mr. Glasgow (Abst., 31; Rec., 94, 188), more fully set out below; and that any authority to require the services so required by said order, as later shown more fully,

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portation and properly loaded: *Provided further*, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised."

This section was amended by Act No. 139 of Public Acts of 1911, by adding thereto the following sub-section:

"(d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: *Provided*, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

The same section was further amended by Act No. 370 of Public

must arise out of some one of these sub-sections of said Section 7, is shown not merely by the argument of counsel below, but by the fact that this is the only section of the act creating the Commission, defining its powers, etc., and of acts supplemental thereto, which deals specifically with the question of interchange of traffic between steam railroads.

Acts of 1913, by adding to Sub-section "a," immediately after the words,

"Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business,"

the following:

"except that carload traffic shall be received and transported from any junction point or transfer point or intersection with another railroad in any city or town, destined to team tracks or other sidings in the same city or town *as hereinafter provided*."

This section was further amended by Act No. 389 of Public Acts of 1913, by adding thereto the following sub-section:

"(c) That any common carrier, railroad, or transportation company receiving property for transportation from a point in the State of Michigan to another point within the State of Michigan, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which said property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation, shall exempt such common carrier, railroad or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading, of any remedy or right of action which he has under existing law: *Provided further*, That the property so received for transportation shall move entirely within the boundaries of the State of Michigan between the points of shipment and its destination: And *Provided further*, That the common carrier, railroad, or transportation company issuing such receipt or bill of lading, shall be entitled to recover from the common carrier, railroad, or transportation company, on whose line or lines the loss, damage, or injury shall have been sustained, the amount of such loss, damage or injury as it may be required to pay to the owners of such property as may be evidenced by any receipt, judgment, or transcript thereof."

The bills aver that said order of said Commission of April 10, 1912, and said Act of the Legislature of the State of Michigan above set forth, in so far as they require of complainants or their property, any of the services above set forth (Abst., 8-9; Rec., 8-9, 112, 113) or so threatened to be required by said

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Said Act No. 300 of Public Acts of 1909 further provides:

"Sec. 10 * * * (b) * * * That upon the filing with the commission by a common carrier of any tariff or schedule showing an advance in rates it shall be lawful for the said commission, and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such new rate or rates shall become effective to such time, not to exceed in all forty-five days, as shall give the said commission opportunity to investigate the reasonableness of such proposed rate or rates, and it shall thereupon be lawful for said commission, and it is hereby authorized, to proceed with all convenient speed with an investigation upon at least five days' notice to said common carrier, either upon its own initiative or upon complaint of the reasonableness of said rate or rates, follow the procedure as near as may be, and make its order therein in the manner hereinafter provided in section twenty-two of this act, such investigation to take precedence of all matters of a different nature pending before the commission; * * * * * * * * * *

"(g) Within six months after the delivery of any shipment of freight at destination any person aggrieved may complain to the commission that the charge exacted for the transportation of such freight between points in Michigan is irregular or exorbitant, and thereupon the commission shall have power to investigate such complaint, and to hear the same and to decide upon the merits thereof, in the manner provided by section twenty-two of this act. If, upon such hearing, the commission shall decide that the rate or charge exacted is irregular or exorbitant it shall find what, in its judgment, would have been a reasonable rate or charge for the service complained of. If the rate or charge so found shall be less than the charge exacted the carrier shall have the right to refund to the person paying such charge the amount so found to be excessive. In case of the refusal of the carrier to make such refund, the party aggrieved thereby may maintain an action in the courts of this state, to recover the amount of such excessive charge as found by said commission, and in the trial thereof the findings of the commission shall be *prima facie* evidence of the truth of the facts found by it, and no carrier shall be permitted to avail itself of the defense of such action that the shipment involved was in fact made on

Commission, constitute the taking of the property of the complainants in contravention of the Fourteenth Amendment to the Constitution of the United States; that they constitute an interference with the interstate commerce carried on over the lines of the complainants, and delay, interfere

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the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the commission or pursuant to a judgment of court as herein provided, shall be liable for any penalty or forfeiture, or subject to any prosecution under the laws of this state on account of making such refund;"

* * * * * * * * *

"Sec. 41. This commission shall inquire into any neglect or violation of the laws of this state by any such common carrier hereinbefore defined doing business therein, or by its officers, agents or employes thereof, and shall have the power and it shall be its duty to enforce the provisions of this act as well as all other laws relating to common carriers and report all violations thereof to the Attorney General. Upon the request of the commission it shall be the duty of the Attorney General, or the prosecuting attorney of the proper county, to aid in any investigation, prosecution, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act and of all other laws of this state relating to common carriers, and for the punishment of all violations thereof. Any forfeiture and penalty herein provided shall be paid to the State Treasurer and shall be recovered and suit therefor shall be brought in the name of the State of Michigan in the Circuit Court of any county having jurisdiction of the defendants. The Attorney General of Michigan, or any prosecuting attorney selected by the said commission in any county where such action is pending, shall be the counsel in any proceeding, investigation, hearing or trial prosecuted or defended by the commission."

* * * * * * * * *

"Sec. 43. Any common carrier subject to the operation of this act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person employed by such corporation, who alone or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall wilfully suffer or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or who shall wilfully omit or fail to do any act, matter or thing in this act required to be done,

with and embarrass said commerce and set forth facts. (Abst., 14-16; Rec., 16-18, 120-123.) The facts set forth also show a violation of the Commerce Act and of the Constitution of the United States, in that Congress has taken over the whole subject matter of terminals, team tracks, switch tracks, sidings, etc., of carriers engaged in interstate commerce, and has enacted that such carriers shall not be required to give the use of such terminal facilities to other carriers engaged in like business, and therefore the requirement of the services enumerated above or any of them is a violation of the commerce clause of the Constitution of the United States and of the Interstate Commerce Act enacted by Congress thereunder.

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or shall cause or wilfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall do or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, or who shall wilfully disobey or knowingly fail or neglect to obey any lawful order made under the provisions of this act by the Michigan Railroad Commission, or shall aid and abet any such disobedience or omission or failure shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court having jurisdiction of misdemeanors, if a penalty for such offense be not elsewhere provided in this act, be subject to a fine of not to exceed five hundred dollars for each offense, in the discretion of the court, or if the convicted party be a natural person, he shall be liable to be punished by imprisonment in the county jail for a period of not to exceed three months, or both such fine and imprisonment, in the discretion of the court."

* * * * * * * * *

"Sec. 46. This act shall not have the effect to release or waive any right of action by the state or by any person for any right, damage, penalty or forfeiture which may have arisen or which may hereafter arise under any law of this state, and all penalties and forfeitures accruing under this act shall be cumulative, and a suit for recovery of one shall not be a bar to the recovery of any other penalty or damage."

The bills further aver that said Commission had no power to regulate the use of complainants' team tracks in any movements above set forth, and had no jurisdiction over any of the services more fully above set out. (Abst., 15; Rec., 16, 120.) This is established by the terms of the statutes referred to, as will be more fully shown in the argument, *infra*. They aver that these services can not be compelled of complainants or their property, inasmuch as complainants were not incorporated for the purpose of local or intracity switching or drayage itself, but for the purpose of interstate commerce and intrastate commerce. (Rec., 11, 116.)

Said act of the Legislature of the State of Michigan being Act No. 300 of 1909, together with the amendments thereto, and said respective orders and each of them, are, in the penalties prescribed for their violation, so drastic, that no owner or operator of railway property can invoke the jurisdiction of any court to test the validity thereof except at risk of imprisonment in the jails in the various counties where the lines of complainants run, and for that reason said Act of 1909, together with all the amendments thereto, including Act No. 139 of the Laws of 1911, and said respective orders and each of them, deny to complainants the equal protection of the laws, and deprive them of their property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States. (Abst., 15; Rec., 16, 121.) Sections 43 and 46 of Act 300 of 1909, of these acts, providing the penalties, are given in the footnote, pp. 17 and 18.

The bills recite that every freight shipment and

every demand upon complainants requiring them to give or perform any of the services above enumerated under said order of April 10 and under the threats of the Commission set forth in the bill (and averred in its answers), will result in an action against complainants or in a criminal proceeding against their officers, agents, directors or employes, and will result in an endless number of actions at law and in criminal proceedings. (Abst., 16; Rec., 17, 122.)

The bills pray that said acts of the Legislature of the State of Michigan, and said order of April 10 of said Commission, purporting to be made thereunder, insofar as they require any of the services above set forth and enumerated, of complainants or their property, may be declared void as to such complainants, and that injunctions interlocutory and perpetual be entered against said defendants, restraining and enjoining them from continuing to suspend said tariff canceling the provisions for such services, and from attempting to enforce said acts so far as they require any of the said services from complainants or their property, and from taking any action, step or proceeding against complainants or any of their officers, agents or employes, to enforce any of the penalties or remedies specified in said Act of June 2, 1909, or any act amendatory thereof or supplementary thereto, or provided in any other of the statutes or by any other of the laws of the State of Michigan, for failure to obey said order of said Commission of April 10, 1912, and the acts of said state hereinabove set forth; and for such

other and further relief as may be just and equitable. (Abst., 17-18; Rec., 19-20, 123-125.)

Affidavits in support of these bills were filed on behalf of the Grand Trunk by Charles S. Cunningham, superintendent of the lines of railroad of that company in Michigan, and for the Detroit Company by Lawrence H. Nolan, chief superintendent of terminals in Michigan. (Abst., p. 27; Rec., pp. 80-174.) These affidavits show that the team tracks of complainants are no greater in capacity than are absolutely required for their own business, and are daily crowded to their capacity and have been constantly so crowded.

Deponent Cunningham (Abst., 27; Rec., 80) states that the use of said team tracks of said Grand Trunk Company for carload business received from other railroads in said city, if received from other railroads in said city, would inevitably congest business and will continuously interfere with the loading and unloading and handling of cars thereon, including the traffic of the State of Michigan and also interstate traffic; that said company is in daily conduct of freight business on said team tracks for intrastate and interstate traffic; that if said complainants shall be required to accept said switching business on its said team tracks it will necessarily follow and when such cars were received it did follow as a result that the interstate business of said complainant was and will be greatly obstructed and delayed; in fact, some of the interstate business must necessarily be crowded out; that the Grand Trunk Company is daily engaged in handling passengers and United States mails and that said

mails are delayed by the congestion of said team track terminals of said complainant in Detroit and must necessarily be delayed if said company is required to receive upon its team tracks cars switched to it in Detroit from other railroads and private sidings on other railroads, in obedience to the requirements of said statute and the orders issued thereunder; that it would suffer irreparable injury as a result of obedience to said orders.

Deponent Nolan (Abst., 28; Rec., 174-5) states that the switching of cars from junction points of other railroads within the switching district of said city to the team tracks of complainant Detroit Company, within the last year, has so congested the tracks of said company as to seriously affect the interstate and intrastate business thereof; that said company is in the daily conduct of freight business on said team tracks, both interstate and intrastate, and it is not possible to conduct the business required by the orders above named of the Michigan Railroad Commission upon the team tracks, at their present capacity. Both deponents affirm (Abst., 28; Rec., 81, 175) that it will not be possible to conduct such business upon the team tracks at their present capacity; that there is no vacant land adjacent to or convenient to complainants' tracks which can be employed and used for team track purposes; it would be necessary to purchase and demolish buildings in order to lay such additional tracks, and this could only be done at the cost of many hundreds of thousands of dollars.

Defendants filed their joint answers to each of said bills May 28, 1912 (Abst., 29; Rec., 82, 176),

the date of the hearing of the application for temporary injunction. These answers admit the averments of the bills as to the description of the Commission and its members, their residence and functions; the passage by the Michigan Legislature of the acts herein complained of; the proceedings in the matter of John S. Haggerty; the issuance of the various tariffs referred to; and the erroneous entering of orders against the Western Company.

The answers further aver (Rec., 88, 182) "the defendant Michigan Railroad Commission admits that it intends to compel the said complainant to comply with the laws of the State of Michigan, insofar as the same require interchange of traffic in the City of Detroit and over the lines of railroads located in said city and claimed to be owned and operated by complainant; * * * admits that it intends to require complainant to continue such local switching and business as is required by the laws of the State of Michigan; and that it will require complainant to allow the use of its terminals to receive from, transfer for or deliver cars to other carriers having terminals of their own within the corporate limits of Detroit, at junction points with such other carriers in local movements in said city, to or from complainant's hold or team tracks within said city insofar as the same are required by the laws of the State of Michigan."

The answer in each case further avers (Rec., 89, 183) that "the defendants admit that if said complainant shall refuse obedience to said order of said Commission dated April 10, 1912 (Defendants' Exhibit B), and if complainant refuses to

comply with the laws of the State of Michigan re
quiring it to make interchange of local traffic, sai
Michigan Railroad Commission and said Franz C
Kuhn as Attorney General of the State of Michigan
on behalf of said Commission and on behalf of the
State of Michigan will institute proceedings under
the statutes of the State of Michigan against com-
plainant to enforce said order of suspension and
said laws of the State of Michigan."

Defendants deny all allegations as to the absence
of power in the Legislature to require the services
in question, or the powers of the Commission to is-
sue orders requiring said services, or the power of
the Attorney General to enforce said orders and to
exact the fines and penalties for any disobedience
to the same; deny that any rates prescribed by said
orders are unjust or unreasonable or unsupported
by the evidence; deny that they intend to enforce
the original orders erroneously entered against said
complainants.

As to all other material averments, they put the
complainants on proof.

In support of these answers Cassius L. Glasgow,
defendant, chairman of the defendant Commission,
filed his affidavit, the material averments of which
are as follows (Abst., 31; Rec., 93, 187):

That the effect of the requirement of local or in-
tracity interchange of traffic, and the transportation
of cars from junction points in said city to the des-
tinations to which they are consigned, as carried on
within the last year pursuant to the requirements
of subdivision d of Section 7 of Act No. 139 of the
Public Acts of the State of Michigan for 1911 did

not in any way tend to congest or impede traffic on the tracks of said railroads in the City of Detroit, including the lines of appellants, and in no way affected interstate and intrastate business except to facilitate the same and to relieve congestion thereof on the tracks of the various railroads in the City of Detroit; that a compliance upon the part of appellants with the requirements of subdivision d of Section 7 of said Act No. 139 of the Public Acts of 1911, requiring interchange of traffic, will not overtax the capacity of the tracks of said companies in the City of Detroit, and will not cause congestion of traffic on said tracks and will not interfere with interstate traffic but will facilitate such traffic; that compliance on the part of said appellants with the requirements of said statute will not cause any interference with the handling of passengers or the United States mails by said companies; and that such passenger traffic and such mail carriage will in no way be interfered with or delayed; that during the past year, while railroad companies operating in the City of Detroit, including appellants, were complying with the requirements of said subdivision d of Section 7 of Act No. 139 of the Public Acts of 1911, and were interchanging carload traffic as therein required, no complaints were received by the Michigan Railroad Commission from any carrier in said city relative to congestion of traffic caused by such interchange of traffic, and no complaints were received by said Commission from any source that such interchange of traffic was causing congestion of freight traffic or interference with or delay in passenger traffic or with the United States mails; and that no application

was made to said Commission by any of said carriers asking for relief under the railroad act of the State of Michigan from congestion of traffic caused by such interchange.

George W. Gulliford, chief clerk at Milwaukee Junction, Detroit, for said complainants; Lawrence H. Nolan, superintendent of Detroit terminals of said complainants; Gordon O'Day, car distributer at Detroit of said complainants; Henry Bromley, chief clerk at West Detroit station of said complainants, and John C. McFadzean, agent at Detroit of said complainants, filed their depositions in further support of said bill, in all material points similar to the affidavits of Cunningham and Nolan, above set forth. (Abst., 34-36; Rec., 95-103, 189-197.)

On May 28, 1912, application for an interlocutory injunction under section 266 of the new Judicial Code was heard by Judges Knappen and Dennison, Circuit Judges, and Sater, District Judge, in the District Court of the United States for the Eastern District of Michigan, Southern Division, on the bills, answers and affidavits in support thereof. August 5, 1912, an opinion was filed, denying the application for interlocutory injunction and vacating the existing restraining order (Rec., 199), but withholding the formal entry of the orders until September 5 (Rec., 214), to give complainants opportunity to present such applications as they might desire for continuance of the restraining order, pending appeal. Thereafter and on September 17, 1912, an order was entered in said court in accordance with the opinion, denying said motions for interlocutory injunctions and for continuance of said restraining

orders, allowing appeal to the Supreme Court of the United States, providing for an appeal bond of a hundred thousand dollars, and continuing in effect the temporary restraining orders heretofore issued, pending said appeal. (Rec., 215-216.)

SPECIFICATION OF ERRORS RELIED UPON.

Appellants claim that there is manifest error on the face of the record in the following particulars, to-wit:

1. The District Court of the United States for the Eastern District of Michigan, Southern Division, erred in denying the motion of complainants for an interlocutory injunction in the above entitled causes as consolidated, as prayed for in said bills of complaint as amended.

2. Said court erred in denying the motion of complainants for a continuance of the restraining order heretofore entered in the above entitled causes as consolidated.

3. The order of said court upholding the validity of the order of Michigan Railroad Commission dated April 10, 1912, is in violation of the Fourteenth Amendment to the Constitution of the United States.

4. The order of said court upholding the validity of the order of Michigan Railroad Commission dated April 10, 1912, is in violation of the Commerce Clause of the Constitution, being the third clause of Section 8 of Article I thereof.

5. The order of said court upholding the validity of the order of Michigan Railroad Commission dated

April 10, 1912, is in violation of the seventh clause of Section 8 of Article I of the Constitution of the United States.

6. The order of said court upholding the validity of Section 7 of Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, in Section 7 thereof, is in violation of the Fourteenth Amendment of the Constitution of the United states in so far as said acts, or either of them, require of the appellants any of the following services, functions or uses, or either of them.

That appellants or either of them shall receive cars from another carrier at a junction point or physical connection with such carrier within the corporate limits of the City of Detroit for transportation to the team tracks of appellants, or of either of them, or that appellants, or either of them, shall be required to allow the use of the team tracks of said appellants, or either of them, for cars to be hauled from said team tracks to a junction point or physical connection with another carrier, within such limits, or that appellants, or either of them, shall be required to haul such cars in either of the above named movements; that appellants, or either of them, shall be required to allow the use of the hold tracks of either of said appellants for any of the services above named; that appellants, or either of them, shall be required to allow the use of any other of their terminal facilities for any of said services; that appellants, or either of them, shall be required to allow the use of their team tracks, hold tracks or other terminal fa-

cilities to any other carrier; that appellants, or either of them, shall be required to deliver the cars of either of said appellants to any other carrier at a junction point or physical connection with such carrier, within the corporate or switching limits of the City of Detroit for delivery to any other point within said limits, or to receive from such carrier at such junction point cars to be delivered to any other point of destination within said limits; that appellants, or either of them, shall be required to allow the use of their team or hold tracks to any industry on the lines of either of said appellants within said limits, or on the line of any other carrier within such limits; that appellants, or either of them, shall be required to allow the use of the team tracks of either of said appellants in any movements between said team or hold tracks, and any other team or hold tracks, whether belonging to either of appellants or to any other carrier within said limits; that said appellants, or either of them, shall be required to undertake, perform or take part in the business of intra-city switching or in any transportation movement from any point within the corporate or switching limits of the City of Detroit to any other point within said limits, or to allow the use of the terminal facilities, team tracks or hold tracks of either of said appellants within said limits for any such purpose.

7. The order of said court upholding the validity of Section 7 of Act No. 300 of the Public Acts of Michigan, 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, in Section 7 thereof, is in violation of the commerce clause of the Con-

stitution, being the 3rd clause of Section 8 of Article 1 thereof, in so far as said acts, or either of them, require of the appellants or either of them or of the property of either of said appellants, any of the services, functions or uses set forth in the third specification of error, *supra*, or either of them.

8. The order of said court upholding the validity of Section 7 of Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, in Section 7 thereof, and in holding valid the order of Michigan Railroad Commission, dated April 10, 1912, purporting to have been made thereunder, is arbitrary, unreasonable and contrary to the Fourteenth Amendment to the Constitution of the United States, in so far as it requires of appellants or either of them, or of the properties of either said appellants, any of the services, functions or uses set forth in the third specification of error, *supra*, without providing any proper and sufficient safeguards against interference with interstate or foreign commerce carried on over the rails of appellants, or either of them, as averred in said bills, by reason of said appellants, or either of them, being required to perform said services, or any of them, or to give the properties of said complainants, or either of them, for said uses, or any of said uses, all as above enumerated.

9. Said court erred in holding said order of said Michigan Railroad Commission dated April 10, 1912, valid and enforceable against appellants, and each or either of them.

10. The order of said court upholding the valid-

ity of Section 7 of Act No. 300 of the Public Acts of the State of Michigan for 1909 as amended by Act No. 139 of the Public Acts of the State of Michigan for 1911, so far as said acts, or either of them, require of appellants, or either of them, or of the properties of said appellants, or either of them, any of the services or uses set forth in the third specification of error, *supra*, or either of them, is a violation of the seventh clause of Section 8 of Article 1 of the Constitution of the United States, for the reason that such services and uses, and each and every one of them, so required of appellants, or either of them, or the property of either of them, interfere with, delay and embarrass the United States mails.

11. The order of said court upholding the validity of Section 7 of said Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, in so far as said acts, or either of them, require of appellants, or of the properties of either of said appellants, the services or uses set forth in the third specification of error, *supra*, or any of such services or uses, for the purpose of rendering which services or uses, or any or either of them, appellants were not incorporated, is a violation of the 14th amendment to the Federal Constitution.

12. The order of said court upholding the validity of Section 7 of Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, insofar as said acts, or either of them, require appellants to give the use of the team tracks, or any of them, belonging

to, or controlled or operated by either of said appellants, within said City of Detroit, for the purpose of loading cars, and to haul said cars from said team tracks to a junction point with another railroad carrier within the corporate limits of said city, and to deliver to said carrier said cars so loaded as aforesaid, for transportation to any other point, either within or without the limits of said city, is a violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

13. The order of said court upholding the validity of Section 7 of Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, insofar as said acts, or either of them, require appellants, or either of them, to turn over the cars of appellants, or either of them, at junction points with any such railroad carrier within the corporate limits of the City of Detroit, either for delivery at another point within said city, or for transportation to a point beyond said city, when the only movement of such cars in which appellants or either of them, had a part, is from appellants' team tracks or other terminals to said junction point, is a violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

14. The order of said court upholding the validity of Section 7 of Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, insofar as said acts, or either of them, will require appellants, or either of them, to expend money to purchase additional ground and lay additional tracks, or to do either of

said things for the purpose of obeying said acts or said order, or either of them, is a violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

15. The order of said court requiring of the appellants, and of each of them, and of the property of each of said appellants, the services and uses demanded by said order of said Michigan Railroad Commission, dated April 10, 1912, enumerated in the third specification of error, *supra*, was in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that Section 7 of Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, under which said order purported to be made, was so uncertain and inconsistent as to be unenforceable, null and void as to the appellants, and each of them, and as to the property of each of said appellants.

16. Said court erred in holding that Section 7 of said Act No. 300 of the Public Acts of Michigan of 1909, as amended by said Act No. 139 of the Public Acts of Michigan of 1911, required or authorized said Michigan Railroad Commission to require by its said order of April 10, 1912, appellants, or either of them, to furnish cars for loading upon the team tracks of either of said appellants, and to haul said cars to junction points of either of said complainants with another railroad carrier, all within the corporate limits of the said City of Detroit, and to turn such cars over to such other carrier at such junction point for transportation to a point beyond said city; and that said Section 7 of said stat-

utes required or authorized said Commission to require that appellants, or either of them, receive cars from any other railroad carrier at a junction point with such carrier, and haul said cars to the team or hold tracks of either of said complainants, and allow the use of such team or hold tracks for unloading said cars, where such cars were moved to such junction point over the lines of such other railroad carrier from a point outside said city; or that said services, or uses, or either of them, are required by said acts, or either of them, of either of said complainants, or of the property of either of said complainants.

17. Said court erred in holding that the switching of a car from the team tracks or hold tracks of the appellants, or of either of them, to a junction point with another railroad carrier, all within the corporate limits of said City of Detroit, for transportation to a point beyond said city, or the switching of a car from such junction point with such other carrier to the team tracks or hold tracks of the appellants, or of either of them, all within said limits of said City of Detroit, where such car had come from a point beyond said city to such junction point, was a transportation movement and not a switching movement, and could lawfully be required of the complainants, or of either of them, or of the property of either of them.

18. Said court erred in holding that the movement of a car from the team tracks or hold tracks of appellants, or either of them, either to other team tracks or hold tracks of appellants, or of either of them, or to junction points of appellants, or of

either of them, with another railroad carrier, all within the corporate limits of said city, where the points of origin and destination of said car were both within said city, was service which could lawfully be required of appellants, or of either of them, or of the property of either of them.

19. Said court erred in holding that said services enumerated in the third specification of error, *supra*, or either of them, could lawfully be required of either of said appellants, or of the property of either of said appellants, under said Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139 of the Public Acts of Michigan of 1911, or under said order of said Michigan Railroad Commission, dated April 10, 1912, or under any other laws or statutes of said State of Michigan, or any order of said Michigan Railroad Commission made, or purporting to have been made, in accordance therewith, as a condition of appellants continuing to perform the business of intrastate carriers within the limits of said state.

20. Said court erred in holding that appellants or either of them had agreed, or impliedly agreed, to perform said services or uses, or to give or allow the property of appellants, or either of them, for such services or uses, by carrying on and conducting intrastate commerce and intrastate business within the limits and jurisdiction of the State of Michigan.

21. Said court erred in holding that appellants, or either of them, could lawfully be required by said acts or either of them, or by any other laws of the State of Michigan, or by said order of April 10, 1912, or any other order made thereunder, to perform or

give such services enumerated in the third specification of error, *supra*, or either of them.

22. The court erred in refusing to hold that subsections (b) and (d) of Section 7, of Act No. 139 of the Public Acts of Michigan of 1911, so far as they required or authorized said Michigan Railroad Commission to require of appellants, or of either of them, or of the property of either of said appellants, the services, functions and uses enumerated in the third specification of error, *supra*, were inconsistent with and repugnant to sub-Section (a) of said act, which enacted that:

> "Nothing in this Act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

And that said Section 7 was, therfore, in its entirety, so uncertain and inconsistent as to be unenforceable against the appellants, or either of them, or against the property of either of said appellants, as to any such alleged requirement of any such services, functions or uses.

23. Said court erred in refusing to hold Sections 43 and 46 of said Act No. 300 of the Public Acts of Michigan of 1909, imposing as penalties heavy fines against appellants, and each of them, and heavy fines and imprisonment against the officers, directors, agents and employes of said appellants, and each of them, for each act of complainants, or of the officers, directors, agents and employes of the appellants, and each of them, in refusing to obey said order of April 10, 1912, of said Michigan Railroad Commission, with no opportunity provided in

said sections to test the validity of said act as to the provisions complained of in these bills, and as to the services so required by said order of April 10, 1912, of said Michigan Railroad Commission, as enumerated more fully in the third specification of error, without incurring said penalties, which said penalties defendants below threatened to enforce, to be null, void and of no effect, as being in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

24. The court erred in refusing to hold that the services enumerated in the third specification of error and required by said order of said Michigan Railroad Commission, dated April 10, 1912, and required of appellants and each of them by said order, constituted interference with interstate commerce carried on by said appellants over the team tracks, hold tracks and other tracks of said appellants within the corporate limits of said City of Detroit.

POINTS AND AUTHORITIES.

I.

The Federal Court in equity has jurisdiction of this controversy for the following reasons, any one of which alone is sufficient:

1. The validity of a state statute, with respect to the Federal Constitution, is involved.

2. State regulation interfering with interstate commerce is shown on the face of the bill.

3. The failure to obey the order of said Railroad Commission, which is unauthorized and void, will, under the State statutes, subject the company to large numbers of suits on the part of the Commission, for heavy penalties, and on the part of individual shippers for damages, and the multiplicity of suits arising under these statutes makes an adequate remedy at law impossible.

Ex parte Young, 209 U. S., 123, 144, 145.

McNeill v. *Southern Ry. Co.*, 202 U. S., 543, at 558.

Cotting v. *Kansas City Stock Yards Co.*, 183 U. S., 79, 99-102.

Dinsmore v. *Southern Express Co.*, 92 Fed. Rep., 714, 715.

Smyth v. *Ames*, 169 U. S., 446, at 517.

This question, the result of the failure to obey the order of the Railroad Commission or to give or perform the services here complained of and required under the strict provisions of these acts, is not a moot one or one separable from the controversy here

in question to be met when such enforcement is attempted in the answers to these bills; for the enforcement of these provisions is actually threatened in the answers. (Abst., 29; Rec., 88-9, 182-3.) These admitted threats are as much the subject of injunction as would be a proceeding actually brought by such a state officer as here threatened.

Where an order of a State Court or Commission has become final, no statute of a state can prevent a litigant from having Federal questions judicially determined in a Federal Court.

II.

The order of the Commission of April 10, 1912, was not authorized by the laws of the State of Michigan and was void.

III.

A statute authorizing the suspension of a tariff without providing for reparation to the carrier for loss sustained in case the provisions of the tariff are subsequently held proper, while the same statute provides for reparation to the shipper by the carrier in case rates or regulations of that carrier are subsequently held within the flexible judgment of the Commission, to be unreasonable or discriminatory, violates the Fourteenth Amendment to the Federal Constitution. An order of suspension issued thereunder is void.

IV.

One carrier cannot be required to allow to another carrier the use of its terminals and to do the switching necessary to that end. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of the cars offered to it at an arbitrary point near its terminus by a competing road for the purpose of reaching and using its terminal station. A state constitution requiring such services of a common carrier is unconstitutional.

Louisville, Etc., R. R. Co. v. *Central Stock Yards*, 212 U. S., 132, at 145.

A fortiori, therefore, a statute requiring such services and all orders of a state commission, however general or specific may be the powers conferred upon it by the state to demand such duties of a carrier, are void. Such is the order of the Michigan Railroad Commission, dated April 10, 1912.

In the case just cited the delivery points were eight miles apart.

97 S. W. Rep., 778, 780.

V.

A carrier need not give the use of its terminals to other carriers except on such terms and conditions as it may impose, and it may choose the carriers to whom it will allow the use of those terminals.

Louisville, etc., R. R. Co. v. *West Coast Co.*, 198 U. S., 483, 498, 499.

Louisville, etc., R. R. Co. v. *Stock Yards, supra.*

United States v. *T. R. Assn.*, 32 Sup. Ct. Rep., 507, at p. 513.

This is particularly true where the use of the terminal facilities cannot be granted to all carriers alike without such congestion as to render prompt and adequate service to any impossible.

Louisville, etc., R. R. Co. v. *West Coast Co.*, 198 U. S., at page 499.

To require a carrier to receive and transport over its tracks the merchandise and cars of any other corporation or individual having connecting tracks is to require it to give the use of its tracks and terminal facilities to another railroad engaged in like business.

Ky. & I. Bridge Co. v. *L. & N. Ry. Co.*, 37 Fed., 537, at 628.

Little Rock & M. R. Co. v. *St. Louis Ry.*, 63 Fed., 775, at 778-80 (C. C. A., 8th Cir.)

Oregon Short Line & U. N. Ry. Co. v. *Northern Pac. R. Co.*, 51 Fed., 465, at 473-5.

VI.

A carrier cannot be required to give its team tracks for the service of loading a car to be turned over to another carrier at a junction point within the same city. Nor can it be required to turn over its own cars to such another carrier to make delivery for it within the same city, where it has its own terminals, whether the car has come from within or without that city.

Louisville & Nashville R. R. Co. v. *Centra*
Stockyards Co., 212 U. S., 132.

Central Stock Yards Co. v. *Louisville*
Nashville Ry. Co., 192 U. S., 568, 571.

VII.

The business of intracity switching, or transporta
tion between junction points of carriers and othe
points all within the same city, is a very differen
business from that of ordinary transportation, o
hauls the width or breadth of one or more states.

State ex inf. v. *Terminal Railroad*, 182 Mo
284, at 296, 297.

Louisville, etc., R. R. Co. v. *Stock Yards Co*
212 U. S., 132, at 145.

Such intracity transportation, or switching serv
ice, is beyond the calling of a railroad company, no
incorporated for such a purpose, and this it canno
be compelled to do. Even the constitution of a state
so far as it requires such service, is void.

Louisville, etc., R. R. Co. v. *Stock Yards Co.*
supra.

This is particularly the law where such regula
tions, as shown in the bills filed herein, result i
interference with interstate commerce.

See authorities cited under Point V, *supra*

VIII.

Requiring complainants to invest large sums o
money in order to provide facilities not within the
contemplation of their calling as interstate and in-

tercity carriers, complainants not having been incorporated as belt line or terminal companies, or to require them to perform services which involve the investment of such moneys for such a purpose, is arbitrary, unreasonable, not justified by public necessity so far as such carriers can be affected thereby, and it is therefore a taking of property contrary to the Fourteenth Amendment.

IX.

The Congress of the United States having acted under the Interstate Commerce Act as to terminals and switching services of carriers engaged in interstate commerce, and having enacted therein that carriers subject to that Act shall not be required to give the use of their tracks or terminal facilities to other carriers engaged in like business, any authority given by state statute to make such requirements is now superseded. This service the interstate carriers are not required to give.

Section 3, Act to Regulate Commerce.

Morris Iron Co. et al. v. *B. & O. R. R. Co. et al.*, 26 I. C. C. Rep., 240.

Railroad Commission v. *St. L., I., M. & S. Ry. Co.*, 24 I. C. C. Rep., 292 at 295.

Northern Pacific Ry. Co. v. *State of Washington, ex rel.*, 222 U. S., 370, 378, 379.

Southern Ry. Co. v. *U. S.*, 222 U. S., 26, 27.

X.

Where a carrier is engaged in both state and interstate commerce, and its facilities are used in com-

mon for both such classes of commerce, an act of Congress relating to the use of such facilities and the manner of carrying on business therewith, supersedes all state legislation on the subject.

Northern Pacific Ry. Co. v. *State of Washington, ex rel. Atkinson, Attorney General,* 222 U. S., 370, 375, 378-9.

Southern Ry. Co. v. *United States,* 222 U. S., 20, 26, 27.

Michigan C. Co. v. *Vreeland,* 227 U. S., 56.

Pederson v. *D. L. & W. R. Co.,* 33 Sup. Ct. Rep., 648.

St. Louis S. F. T. R. Co. v. *Seale,* 33 Sup. Ct. Rep., 651, 652.

The expression of the intention of Congress to bring the subject within its control is alone sufficient. Though there be no act of Congress operative, and no regulation in force, such expression, as soon as uttered in legislative form, at once supersedes and excludes all power of a state to legislate on or enforce legislation with reference to the subject.

Northern Pacific Ry. Co. v. *State of Washington, ex rel., etc., supra,* 222 U. S., 370, 378, 379.

Congress has in Sections 1 and 3 of An Act to Regulate Commerce, etc., approved February 4, 1887, and Acts amendatory thereof and supplemental thereto, defined the services, functions and uses of carriers engaged in interstate commerce, and has expressed its will and policy to be that no such common carrier shall be required "to give the use of its tracks or terminal facilities to another carrier engaged in like business."

XI.

A service that interferes with interstate commerce cannot be imposed by a state. A statute imposing such service is void.

Houston, etc., Ry. Co. v. *Mayer*, 201 U. S., 321, 327, 328.

Western Union Telegraph Co. v. *Kansas*, 216 U. S., 1, 7, 27, 37.

Pullman Co. v. *Kansas*, 216 U. S., 56, 65.

Ludwig v. *Western Union Telegraph Co.*, 216 U. S., 146, 162, 163.

Mugler v. *Kansas*, 123 U. S., 632, 661; 8 Sup. Ct., 273; 31 L. Ed., 205.

Henderson v. *Mayor of New York*, 92 U. S., 259, 268; 23 L. Ed., 543.

Minnesota v. *Barber*, 136 U. S., 313, 319, 330; 10 Sup. Ct., 862; 34 L. Ed., 455.

XII.

The 7th clause of Section 8 of Article 1 of the Constitution of the United States gives Congress exclusive control of postoffices and postroads. Any services, functions or uses demanded of a common carrier engaged in the carrying of mails or of the property of such a carrier, that interfere with, embarrass or impede the carriage of U. S. mails are, therefore, a violation of said clause.

XIII.

Neither Act No. 300 of 1909 of the Legislature of Michigan nor Act No. 139 of 1911 of said Legislature, amending said Act No. 300, nor said order

of Michigan Railroad Commission, dated April 10, 1912, purporting to be made under and in accordance with said acts, nor any other of the statutes of the State of Michigan, make any provision for the safe and speedy return of cars delivered when required to be hauled by one carrier from its team tracks or other terminals in a city to the junction point of such carrier with another carrier within the same city for delivery to such other carrier for further transportation either within the limits of to a point beyond the said city; nor is any provision made in said acts or said order for loss or damage to the carrier owning the cars, by reason of inability to use the same in state and interstate commerce over its own lines while such cars are detained by such other carrier to whom they have been delivered under the order; on the other hand, by reason of the liability imposed under Sub-section E Section 7, Act No. 139 of the published Acts of 191 (Statement of Facts, footnote, p. 14), an additional burden is placed on the carrier required to furnish such cars by reason of its liability as initial carrier for loss on the lines of other carriers without any provision for safeguarding itself against the insolvency or incapacity of such other carrier to indemnify.

XIV.

Railroad carriers cannot be compelled to perform a service which is not within the terms of their calling and from which they have voluntarily withdrawn.

XV.

The mere extension of a facility to the public by a carrier, which it is not required under the law to give, will not prevent such carrier from withdrawing that facility from the use of the public at any time it may see fit.

Express Cases, 117 U. S., 1, 26.

Providence Coal Co. v. *Providence & W. R. Co.*, 1 I. C. C. Rep., 363, at 368 (opinion by Judge Cooley).

Douglas & Co. v. *C., R. I. & P. R. R. Co. et al.*, 21 I. C. C. Rep., 97, at 102.

XVI.

These statutes, by reason of the heavy fines provided for all violations thereof, with no opportunity given therein to test their validity as to the provisions complained of in these bills, without incurring the risk of these penalties, are unconstitutional on their face.

Ex parte Young, 209 U. S., 123, at 148.

In the course of a single day's business, fines amounting to thousands of dollars would be incurred by the carriers and their officers while the validity of these acts was being tested, in the event the decision of the court of last resort should be adverse. This is directly involved in this very proceeding, since, as shown above (Statement of Facts, pp. 23, 24), the Michigan Railroad Commission and the Attorney General have in this very proceeding by their answers filed herein, declared their intention

to enforce against these defendants the very statutes here complained of and the services required by those statutes enumerated above, and to proceed to collect penalties for failure to perform such services and obey those statutes. No provision is made therein for a *bona fide* test. While an appeal to the state courts is provided, no suspension of penalties for failure to obey the statutes and give the services during the pendency of the appeal is provided. The matter of the penalties and their unconstitutionality is therefore directly in question in this controversy.

ARGUMENT.

I.

JURISDICTION.

The bill brought by Grand Trunk Railway Company of Canada (hereinafter called "Grand Trunk"), one of the appellants, against the appellees, shows the diversity of citizenship and monetary value involved necessary to give this court jurisdiction. (Abst., 3; Rec., 2, 106.) That bill also presents the same Federal questions as the bill brought by Detroit, Grand Haven & Milwaukee Railroad Company (hereinafter called "Detroit Company") against the same defendants. (Abst., 3; Rec., 11, 12, 13, 15, 16, 17.) In the latter suit the jurisdiction of the Federal Court rests on the following questions, each alone sufficient to support the jurisdiction (Abst., 3; Rec., 106, 112, 113, 116, 118, 119, 121, 122):

1. The validity, with reference to the Federal Constitution, of a certain order issued by the Michigan Railroad Commission (hereinafter called "The Commission"), a body created by the statutes of said state, with certain delegated powers under which authority to make this order is claimed; and also of the statutes of that state under which said order purports to have been entered.

That Commission is shown to have entered its certain order, dated April 10, 1912, suspending the tariff of appellants known as "Supplement No. 6 to M. R. C., 236" (Ex. H, Abst., 26; Rec., 78, 172),

which tariff withdrew the use of all team tracks of appellants within the corporate limits of the City of Detroit from carriers connecting with the lines of appellants at junction points within said limits, with a certain exception therein named (discussed under Point V, p. 70, *infra*). Under this order of suspension appellants are required to continue to allow the use of their team tracks to such other carriers, and to continue a local or intracity business, both of which requirements constitute the taking of property without due process of law and are beyond the power of the Legislature to demand, or of the Commission to order.

> *Louisville, etc., R. R. Co.* v. *Central Stockyards*, 212 U. S., 132, at 145.
>
> *Louisville, etc., R. R. Co.* v. *West Coast Co.*, 198 U. S., 483, 498, 499.

That said Commission and the Attorney General of Michigan will require these services and enforce these statutes against appellants is expressly averred by those defendants in their answers. (Abst., 29; Rec., 88, 89, 182, 183.)

Section 41 of Act 300 of the Acts of 1909, of the Michigan Legislature (given in full, p. 17, foot note, *supra*) enjoins upon the Commission the duty to enforce the provisions of that act, under the terms of which, as amended by Act 139 of the Acts of 1911, the order here in question purports to have been made, and requires the Attorney General, upon request of the Commission, to institute and prosecute all cases, actions or proceedings for the enforcement of that act and the punishment of all violations

thereof, among which is the refusal on the part of any railroad carrier within that state to obey an order issued by that Commission.

That this question as raised is alone sufficient to give jurisdiction, is held in *Ex parte Young*, 209 U. S., 123, at 144, 161. At the latter page the court declared:

> "It is said that the Attorney General is only bound to act when the Commission orders action to be brought and that Section 5 of the Commodity Act (April 18, 1907) expressly provides that no duty shall rest upon the Commission to enforce the act, and hence no duty other than that which is discretionary rests upon the Attorney General in that matter. The provision is somewhat unusual, but the reasons for its insertion in that act are not material, and neither require nor justify comment by this court.
>
> "It would seem to be clear that the Attorney General, under his power existing at common law and by virtue of these various statutes, had a general duty imposed upon him, which includes the right and the power to enforce the statutes of the state, including, of course, the act in question, if it were constitutional. His power by virtue of his office sufficiently connected him with the duty of enforcement to make him a proper party to a suit of the nature of the one now before the United States Circuit Court."

2. These acts, so far as they require appellants to allow the use of their team tracks, and other terminal facilities, to other carriers and industries, and for switching between said tracks and such other industries and the junction points of the tracks of appellants with those of such other carriers, and

said order of said Commission dated April 10th, 1912, requiring these services, constitute actual interference with interstate commerce, as more fully set forth in Point IX, p. 94, of this argument. That this is a Federal question, is held in authorities cited under Point I, p. 36, Points and Authorities, *supra*, particularly *McNeill* v. *Southern Railway Company*, 202 U. S., 543, at 558, 559; and *Ex parte Young*, *supra*, 209 U. S., at p. 145.

3. The penalties for the failure to obey the provisions of this act and the orders of the Commission made thereunder are given in Sections 43 and 46 of Act 300 of the Acts of 1909, set forth in the footnote on pp. 17, 18, *supra*, and discussed later under Point XIV of this argument.

Under the provisions of those sections, the carriers may incur in the course of a single day's business fines amounting to thousands of dollars, and their officers, agents and employes may incur not only similar fines, but jail sentences running into years, while the validity of these acts is being tested in court, should such a test result in a decision adverse to the carriers.

That such a statute is unconstitutional on its face, and that jurisdiction exists in the Federal Court to enjoin the enforcement thereof, without regard to the question of citizenship, has been established by the authorities cited under Point I of our Points and Authorities, p. 38, *supra*, and particularly in *Ex parte Young*, 209 U. S., 123, at 144, 145.

This question, the result of the failure to obey the order of the Railroad Commission or to give or perform the services here complained of and maintained

by defendants to be required under the strict provisions of these acts, is not a moot one or one separable from the controversy here in question, to be met when such enforcement is attempted, for, in the answers, the enforcement of these provisions is actually threatened by appellees Commission and Attorney General. (Rec., 88, Ans., pars. XVII and XVIII; Rec., 89, Ans., par. XXI; Rec., 182, Ans., pars. XIX and XX; Rec., 183, Ans., par. XXIII.) These admitted threats are as much the subject of an injunction as would be a proceeding actually brought by such a state officer.

Other cases on these points will be found in our "Points and Authorities," at page 38, but *Ex parte Young,* which deals with and discusses all the grounds of jurisdiction just enumerated has held each of them sufficient, and has forever disposed of all doubts as to the power of this court to entertain suits based on facts and conditions similar to any of the several grounds on which these bills of complaint rest.

II.

THE ORDER OF THE COMMISSION OF APRIL 10, 1912, WAS NOT AUTHORIZED BY THE LAWS OF THE STATE OF MICHIGAN, AND WAS VOID.

A. There is no provision in the laws of Michigan requiring one carrier to receive and transport cars from the junctions of its lines with another carrier within the corporate limits of a city to team tracks or other sidings on its own line, within the same city, except where the freight in such cars has its

origin and destination both within the boundaries of the same city.

The material provisions [(a) and (d)] of Section 7 of Act 139 of 1911, under which the order herein complained of purports to have been made, are set forth in the bills of complaint, and quoted in the footnote, pages 13, 14, *supra*. (Abst., 6, 8; Rec., 6, 7, 111, 112.)

Subsection (a) provides for the interchange of traffic between the lines of different carriers for the purpose of through transportation. Subsection (d) provides for the interchange of traffic locally consigned. Subsection (b) deals with provisions for switch connections (not here in question), and interchange thereover for through traffic, including electric and interurban lines; while subsection (c) deals only with the hauling of merchandise, or cars of other corporations not common carriers.

Subsection (a), as enacted in Section 7 of both Act 300 of 1909 and Act 139 of 1911 amending said Act 300, provided:

> "Nothing in this Act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

The Michigan Legislature amended this section in Act 370 of the Public Acts of 1913, as shown in the footnote, p. 15, *supra*, by inserting after the words "engaged in like business" the following: "Except that carload traffic shall be received and transported from any junction point or transfer point or intersection with another railroad, in any city or town, destined to team tracks or other sid-

ings in the same city or town, *as hereinafter provided.*" By those three words, "as hereinafter provided," this exception was expressly limited to Subsection (d), inasmuch as that is the only succeeding sub-section dealing with interchange between common carriers of freight at junction points in a city for delivery in the same city. Inasmuch as that subsection provides only for "carload traffic offered for transportation under the usual conditions, *locally consigned between points in the same city or town,*" this exception is limited to transportation of freight, the origin and termination of which are both within the boundaries of the same municipality.

The inhibition against requiring "any railroad to give the use of its tracks and terminal facilities to another railroad engaged in like business" still remains as to all other traffic.

By re-enacting this limitation not only in Act 139 of 1911, but also in Acts 370 and 389 of 1913, both of the latter passed since the decision in the court below in the present controversy, the Legislature of Michigan has manifested its will that this restriction should remain actively in force. The exception added by the amendment of 1913 only proves the continuing effect of this limitation upon the interchange of all traffic not within the terms of this exception.

This Amendment, which is an expression of the legislative will upon the validity of that limitation, makes it clear that there was no authority under these Acts, or any of them, to require one carrier to receive from another, and transport and deliver on its own line, cars coming from a point outside the city for delivery within; nor to

transport for another carrier and turn over to such other carrier cars to be transported without the limits of the city. The use of its team tracks for cars to be loaded and so transported, and of its terminals for such switching services, was as much the giving of the use of those terminals as the receiving of cars thereon from a junction point of the terminal line with the line of another carrier.

As there was, therefore, no provision requiring one carrier to receive from another, at a junction point within a city, a car arriving from points outside of the city for delivery therein, neither was there any authority in these Acts, or any of them, under which the Commission could require one carrier to give its terminals for the purpose of receiving from or delivering to another carrier, at a junction point with such other carrier, cars arriving from or destined to points outside the city. The Legislature of Michigan has spoken precisely upon this point by its interpretation in Act 370 contained.

B. Subsection (d), however, does not require a common carrier to load upon its team tracks, transport and deliver to another carrier at a junction point within the same city cars containing carload traffic for transportation by such other carrier. It makes no difference whether its terminals be used for the beginning or the ending of the switching movement, whether the carloads be loaded or unloaded upon its tracks; it is giving its facilities to the use of the other carrier to the same degree in both cases. The inhibition in sub-section (a) contained is operative save only as provided in the exception. The exception is confined to traffic covered by sub-section

(d) and that sub-section includes only receiving and transporting carload freight "locally consigned."

C. Before this exception was added to the restriction of sub-section (a) the re-enactment of that section, together with that restriction, was a sufficient indication of the legislative will that it should not give way to any other section. Section 7 was re-enacted only as a whole. Whatever may have been the view before the amendment of 1907, the addition of the exception, not as an interpretation or construction, but as carving out a specific class of traffic from the restriction so re-enacted, makes clear the intent of the Legislature that until the passage of Act 370 of 1913 one carrier could not be required to perform terminal services for another carrier entering the same city.

The order of April 10, 1912, was therefore void in any view, as entered without legislative sanction, as it required the continuance of all the services complained of and the use of appellants' terminals for traffic arriving from points outside as well as from points within the city.

As the order of the Commission, dated April 10, 1912, suspended the tariff of appellant which attempted to withdraw its team tracks from the use of other carriers as to cars arriving from or destined to points outside the city over the lines of another carrier, and from use in a switching movement from team tracks to junction points, as well as from them, the suspension of that tariff *in toto* by the Commission was unauthorized by law, and therefore null, void, and of no effect, and constituted the taking of the property of appellants in violation of the Fourteenth Amendment to the Federal Constitution.

III.

SECTION 10 (G) OF ACT 300 OF THE PUBLIC ACTS OF MICHIGAN, 1909, AUTHORIZING THE SUSPENSION OF A TARIFF AND REQUIRING A RAILROAD COMPANY TO CONTINUE SERVICES WITHDRAWN UNDER THAT TARIFF, WHEN NEITHER THE SERVICES NOR RATES FOR SUCH SERVICES HAD BEEN DETERMINED BY A PREVIOUS HEARING TO BE JUST AND REASONABLE, AND WITHOUT PROVIDING FOR REPARATION OR INDEMNIFICATION TO THE CARRIER FOR DAMAGE ACCRUING TO IT BY REASON OF THE PERFORMANCE OF SUCH SERVICES, OR THE RECEIVING OF RATES LOWER THAN MIGHT LATER BE ADJUDGED TO BE REASONABLE, WHILE THE SAME STATUTE ALLOWS REPARATION TO SHIPPERS FOR CHARGES PAID BY THEM TO THE CARRIER SUBSEQUENTLY DETERMINED TO BE UNREASONABLY HIGH, VIOLATES THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

The order of the Commission dated March 15, 1912 (Exhibit F, Abst., 25; Rec., 73, 167), suspended appellants' tariff known as Supplement No. 4 to Grand Trunk M. R. C. No. 236 (Exhibit E, Abst., 24; Rec., 72., 166), which tariff advanced the rates for switching between hold or team tracks on the Grand Trunk Railway System and other hold or team tracks on that system, and also for switching between junction points with connecting carriers within the boundaries of the switching district of Detroit and industries having private sidings on the Grand Trunk Railway System within said boundaries. Upon this suspension appellants issued a further tariff suspending this Supplement No. 4, entitled Supplement No. 5 to M. R. C. 236 (Exhibit G, Abst., 26; Rec., 74, 168.) Thereafter appellants published a further tariff entitled Supplement No. 6 to M. R. C. No. 236, etc. (Exhibit H, Abst., 26; Rec., 76, 170),

by which they withdrew the use of their team tracks from all intracity, intrastate and interstate switching movements. (Abst., 13; Rec., 14, 119.) This tariff is the one suspended by the order of April 10, 1912. As this tariff attempted to cancel both of the preceding tariffs, but was suspended before its operative date, Supplement No. 5 would but for the restraining order heretofore entered in this cause be now in effect, which would automatically restore the original tariff with its lower rates.

Section 10 (b) of Act 300 of Public Acts of Michigan, 1909, quoted in the footnote to page 16, provides for suspension by the Commission of any tariff or schedule showing an advance in rates for a period not to exceed 45 days. During that time the carrier is required to charge the lower rate attempted to be superseded by the new tariff or to give the services attempted to be withdrawn thereby. No reparation or indemnification is provided in case the tariff shall be later adjudged to be reasonable. On the other hand, sub-section (g) quoted in the same footnote, gives the shipper a right to reparation for charges exacted by a carrier subsequently determined by the commission to be "irregular and exorbitant." The measure of reparation to be awarded by the commission is "what in its judgment would have been a reasonable rate or charge for the service complained of." For failure to obey any such suspension or any other order of the commission, large penalties are provided in Sections 43 and 46 of that act, set forth in the footnote on page 18. Any person considering himself to be aggrieved may make complaint, and the commission has power

without previous hearing to restrain the new tariff, and the rules and rates therein, until it may decide what in its judgment such rate or rule should be. In the meantime, the carrier pockets a loss; but as a glance at the reports of the various railroad commissions will confirm, the carrier for a failure to predetermine what the judgment of a commission may be on the matter of a rate, will be required to pay the difference to any shipper between the rate it may have considered proper and that which the commission may subsequently, in what this court has so well termed its "flexible judgment," hold reasonable. As shown above, by the effect of this suspension order of April 10, 1912, appellants would be compelled not merely to give the services which they have withdrawn, but to give them at a lower rate until a hearing could be had and the matter determined.

There is no statute to be found on the books exhibiting a plainer violation of the Fourteenth Amendment and a clearer denial of equal protection before the law, than this and similar statutes giving to railroad commissioners this arbitrary power over the property of the carriers, denying to them the compensation that they may allow to any shipper who may choose to file his claim.

This suspension order issued under such an unconstitutional provision, must, therefore, be held void.

IV.

ONE CARRIER CANNOT BE REQUIRED TO TURN OVER TO ANOTHER CARRIER ITS CARS, EITHER TO BE DIVERTED FROM ITS TERMINALS WITHIN A CITY TO ANOTHER POINT IN SAID CITY ON THE LINE OF SUCH OTHER CARRIER, OR FOR USE ON THE LINE OF SUCH OTHER CARRIER FOR A THROUGH TRANSPORTATION MOVEMENT IN WHICH THE CARRIER FURNISHING THE CARS HAS NO PART; NOR CAN ONE CARRIER BE REQUIRED TO ALLOW TO ANOTHER CARRIER THE USE OF ITS TERMINALS NOR TO DO THE SWITCHING NECESSARY TO THAT END. ANY ENACTMENT OF A STATE REQUIRING SUCH SERVICES OF A COMMON CARRIER NOT INCORPORATED PARTICULARLY THEREFOR, AND ANY ORDER OF A STATE COMMISSION REQUIRING SUCH SERVICES, OR EITHER OF THEM, IS UNCONSTITUTIONAL.

As shown in the statement of facts, pages 1, 20, *supra*, the material object of the bills filed in this cause was to prevent the Michigan Railroad Commission and the Attorney General of said state from enforcing or attempting to enforce a certain order of said Commission dated April 10, 1912 (Defendants' Exhibit B, Abst., 30; Rec., 92, 186), and certain Acts of the State of Michigan under which said order purported to have been made, which order by its essential effect and which statutes, as claimed by defendants, and by the District Court in its opinion (Abst., 45, 49; Rec., 204, 206), by their clear terms require appellants to turn over their cars to other carriers at junction points within the switching limits of the City of Detroit, either for haul beyond or haul to another point in said city, with no part in the through movement where the haul is beyond the city, and ample terminal facilities for the delivery of

cars to shippers over their own lines; and to allow the use of their team tracks and other terminal facilities to other carriers connecting with appellants' lines at points within the City of Detroit and to industries either located on the lines of appellants within such limits or on the lines of other carriers connecting with those of appellants therein. This will require appellants to engage in a local switching business, intracity transportation, carrying on over these rails devoted to interstate and intercity service local traffic made up of movements having their beginning and conclusion at points within the corporate or switching limits of said city. The statement of facts (pages 3, 13, *supra*) contains a detailed enumeration of the statutes of Michigan, and services required by the order of the Commission, herein sought to be enjoined, and their injurious effect on appellants and on the interstate and other commerce carried on by them. The important facts are that appellants canceled all rates in their tariffs for switching carload traffic between the following classes of points, all within the boundaries of the switching district of Detroit (Bill, Rec., 14; Ex. H, Rec., 76, 78):

(1) Industries having private siding on appellants' lines and hold or team tracks thereon;

(2) Hold or team tracks on appellants' lines and other hold or team tracks on those lines (Ex. H, "Change 15," Rec., 78); and,

(3) Between hold or team tracks on the appellants' lines within said city and junction points of appellants with other railroads within the same boundaries (Ex. H. Change 3, Abst., 28; Rec., 78,

172); the latter change having been effected by canceling Note 1 providing for the last described switching service. (See Ex. C, Abst., 20; Rec., 40.)

That tariff (Ex. H) was suspended by the Michigan Commission April 10, 1912, which action requires appellants to continue to perform these services.

The case presented here is on all fours with the facts shown in *Louisville, etc., Ry. Co.* v. *Stock Yards Co.*, 212 U. S., 132, at 138, and requires the same decision. As this case has been the subject of much attempted distinction, both in the opinion of the learned court below, and by the decision in the Supreme Court of Indiana therein cited, which would leave this decision ineffective in every practical case brought under its principles, we give at greater length and in greater detail the exact facts involved in that controversy, the history of the litigation, and the scope of the legislation there in question. Those facts will be found at length in the careful opinion of the Court of Appeals of Kentucky, 97 S. W., 778, reversed by this court in the *Louisville & Nashville R. Co.* v. *Central Stock Yards*, 212 U. S., 132, now under discussion. Those facts, and the rulings thereon by the Court of Appeals of Kentucky, as shown in its decision, were as follows (see 97 S. W., 778):

The Louisville & Nashville Ry. Co. had entered into a contract with the Bourbon Stock Yards by which it was provided that this stock yards should be the stock depot of the railway in Louisville and that the Louisville & Nashville should not establish any other stock depot in said city (page 787). The Central Stock Yards was located upon the line of

the Southern Railroad of Kentucky, about nine miles from its terminal in the City of Louisville near and just outside the city limits (page 787). Under a similar arrangement with the Southern Railway it constituted the live stock depot for that line. Both yards were modern, well equipped and adequate to handle stock shipments of the kind in question. These stock yards *were not located side by side,* although as that did not affect the question when both were within or near the city limits, the Supreme Court of the United States, in reviewing a case involving the same questions arising between the same parties (*Central Stock Yards Co.* v. *Louisville & Nashville Ry. Co.,* 192 U. S., 568), had said that for the purposes of the argument they had been treated as if they were together. *They were in fact and as shown by the record some eight miles distant.* The break-up yards of the L. & N. were not more than a hundred yards from appellees' stock yards (Central Stock Yards Company), and there was actual physical connection between the tracks of the two railroads about a mile and a half northeast of the break-up yards, which connection had been customarily used for the purpose of transferring cars between the lines at this point. In these break-up yards cars arriving over the L. & N. would be taken and so placed as to be available for switching to their various destinations in the usual manner of accomplishing a transfer of cars between railroad companies. So that while it would have been a very easy matter to perform the switching between these break-up yards and the junction point, some 2,600 yards distant, the terminal point of the Louisville

& Nashville R. R. bringing the cattle in question into the City of Louisville was eight miles from the point at which delivery was sought and for which an adequate delivering station existed on another line with a proper switching connection, and means of interchange between the two.

The Central Stock Yards Company first brought its bill in the Federal Court against the Louisville line to compel it to receive live stock tendered to it outside of the State of Kentucky for the Central Stock Yards station and to deliver the same at a point of physical connection between its road and the Southern Railway for ultimate delivery to or at the Central Stock Yards. The right was claimed by plaintiff under the Interstate Commerce Act, February 4, 1887, Ch. 104, Sec. 3, 24 St., 379, and also under the Constitution of Kentucky, especially Section 213 thereof. It is to be noted that in that case as in the present there was physical connection and a power of interchange of cars between the respective lines. There were also yards within which the cars could be broken up and switched to other lines; but because the L. & N., as a matter of fact, in order to make such interchange, would have been required (as is the case under the order of April 10, 1912, and the interpretation of the Michigan statutes complained of) to turn over its cars to the Southern Railway, the court in both cases (192 U. S., 568, and 212 U. S., 132), held that such a requirement could not be lawfully made, notwithstanding the provisions in the first named clause of the Interstate Commerce Act requiring all reasonable, proper and equal facilities for the interchange of traffic between

the respective lines and the receiving, forwarding and delivery of property to and from their several lines and those connecting therewith; and in the second case the conclusive provisions of the Kentucky Constitution interpreted by the court of last resort of the State of Kentucky (whose interpretation by all rules of this Supreme Court must be held binding on the Federal tribunals as to the exact meaning and intent of the State Act in question).

In the first named case the court refused to interpret the Kentucky Constitution as requiring the particular service there sought and hence passed only on the question of the effect of the Interstate Commerce Act.

This court there held (192 U. S., 568, at 570):

> "The Bourbon Stock Yards are the defendant's depot. They are its depot none the less that they are so by contract and not so by virtue of a title in fee. Unless a preference of its own depot to that of another road is forbidden, the defendant is not within the Act of Congress. Suppose that the Southern Railway station and the Louisville and Nashville station were side by side, and that their tracks were connected within or just outside the limits of the station grounds. It could not be said that the defendant was giving an undue or unreasonable preference to itself or subjecting its neighbor to an undue or unreasonable disadvantage if it insisted on delivering live stock which it had carried to the end of the transit at its own yard. These views are sanctioned by what was said in *Covington Stock Yards Co.* v. *Keith*, 139 U. S., 128. The fact that the plaintiff's stock yards are public does not change the case. See further *Butchers' & Drovers' Stock-Yards Co.* v. *Louisville & Nashville R. R. Co.*, 67 Fed. Rep., 35.

"If the cattle are to be unloaded then, as was said in *Covington Stock-Yards Company* v. *Keith*, the defendant has a right to unload them where its appliances for unloading are, and cannot be required to establish another set hard by. On the other hand, if the cattle are to remain in the defendant's cars it cannot be required to hand those cars over to another railroad without a contract, and the courts have no authority to dictate a contract to the defendant or to require it to make one. (Citing cases.) The concensus of the Circuit Courts is to the same effect. (Citing cases.) All that was decided in *Wisconsin, Minnesota & Pacific R. R.* v. *Jacobson*, 179 U. S., 287, was that by statute two railroad companies might be required to make track connections. So much of the statute as undertook to regulate rates was not passed upon. See *Minneapolis & St. Louis R. R.* v. *Minnesota*, 186 U. S., 257, 263. There is no act of Congress that attempts to give courts the power to require contracts to be made in a case like this."

The section of the Constitution of Kentucky there in issue (Sec. 213) provided:

"KENTUCKY CONSTITUTION, SEC. 213.

"FREIGHT AND CARS TO BE HANDLED AND TRANSPORTED WITHOUT DISCRIMINATION. All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this state, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in carloads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any

> person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

That constitution, under which this service was demanded, did not provide that the service should be performed at the mere cost of the haul; nor did it leave the carriers without power to demand proper charges for the service. The Constitution and laws of Kentucky at that time left the carriers free to charge any reasonable rate for transportation services. They were only forbidden to discriminate; but no power was vested in the Kentucky Commission to use what this court has so well in other cases termed "the flexible judgment of the Commission," and to fix such rates as it should deem proper. They had power only to forbid extortion, but not to fix the charges. They had power only to prevent discrimination, and not to forbid the charging of fair rates for every service. The carriers were left free to fix their own rates, so long as they did not discriminate and did not extort.

This decision was not based on mere distances, but on the reasonable distinction of function of a through carrier.

This court is not sitting merely to determine whether eight, nine, ten, eleven or twelve miles is the proper distance to mark off switching from transportation services. They are here to de-

clare principles, create precedents, and settle the basis of vexed constitutional questions. The only rational basis upon which the doctrine enunciated in the *Louisville & Nashville* case can stand is that a railroad carrier completes its haul when it reaches the city of the consignee; that it has the right to deliver to its terminals there for such consignee, and cannot be compelled to turn its cars over to another railroad company for such delivery; that as it cannot be compelled to turn its cars over to another railroad company for such delivery so it cannot be required to give its terminals to another railroad company for the purpose of mere local delivery within such a city; that as it cannot be compelled to stop at every city block to let off passengers at points nearer to their homes than its ordinary stations established for such a purpose, so it cannot be compelled to carry freight from block to block or mile to mile for a shipper, either to complete the terminal delivery of another carrier in a more convenient manner within the same city, or to subserve the local convenience of a shipper by turning over its cars and losing possession and use thereof for days at a time while they are on the rails of another carrier. This rational distinction is not broken down by the suggestion that the distances between stations along the line of a carrier may be less than the distances within the city limits or by the assertion that to use the boundaries of a city and distinguish points immediately without those boundaries from points within that may be situated even further apart is an artificial one. It is no more artificial than any rule that must be adopted in order

to give security to property, stability to the laws, and to assure the free and speedy flow of interstate commerce. Some line must be drawn, some limit must be made to local services that can be demanded of carriers making up the channels of national commerce. Such a reasonable regulation preserves their character as national highways and great arteries of the through commerce of the country.

That the Constitution of Kentucky might not be held invalid, where, under a reasonable construction, it might be sustained, it was held to refer only "to cases where the freight is destined to some further point by transportation over a connecting line. It cannot be intended to sanction the snatching of the freight from the transporting company and at the moment for the purpose of delivery." (Page 571.) That is, in order to hold the requirement to interchange cars by the compulsion of the statute valid, this must be for the purpose of a through movement; one railroad cannot be required to furnish cars for another, and to haul them from its terminal to its junction point with such other railroad within the same city. If there can be any taking of property from a railroad corporation that is inhibited by the Constitution, surely no stronger instance of a taking of the property of one line by another line can be shown than to compel one carrier to furnish cars for another carrier or to allow such other carrier the use of its own costly terminals.

On this very point, when the Kentucky Court of Appeals had ruled, as has the District Court in the present instance, that these very services could be

compelled, this Supreme Court held (212 U. S., 132, at 145):

> "There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to anyone at the Bourbon Stock Yards. This also is based upon the sections of the Constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense and cannot be justified unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed special liability, but upon the broad ground that the state Constitution requires it and lawfully may require it of a common carrier by rail. Therefore the judgment must be reversed."

The order of April 10, 1912, by suspending the tariff of appellants withdrawing these local terminal services, of the very kind pronounced in the *Louisville* case, *supra*, to be beyond the power of a state to demand, expressly requires their continuance. As to local traffic, the Michigan acts complained of, as interpreted by the Commission and the court below,

require not only that a carrier draw over its own lines "the merchandise and cars of any other corporation or individual having connecting tracks," but that "every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates, from any junction point or transfer point for intersections with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line, when required so to do." (Act 139 of 1911, Section 7, "c" and "d," footnote, pp. 13, 14, *supra.*

In the *Louisville* case, just cited, the state constitution, so far as it was held by the Court of Appeals of Kentucky to require such services, was held void.

This is upheld by the principles enunciated in *United States* v. *T. B. Assn.*, 32 Sup. Ct. Rep., 507, more fully discussed in Point V of this argument, which holds that the terminal facilities of a carrier are such as it may grant to or withhold from other carriers, as it may see fit, and as may be considered for its own best interests, where the question is of terminal services or intra-city haul, and not one of through carriage in which the carrier whose facilities are sought, participates.

There is not a case to be found in the Supreme

Court of the United States that holds a contrary doctrine.

V.

A CARRIER NEED NOT GIVE THE USE OF ITS TERMINALS TO OTHER CARRIERS EXCEPT ON SUCH TERMS AND CONDITIONS AS IT MAY IMPOSE, AND IT MAY CHOOSE THE CARRIERS TO WHOM IT WILL ALLOW THE USE OF THOSE TERMINALS.

In the recent case of *United States of America* v. *Terminal Railroad Association of St. Louis et al.*, 32 Sup. Ct. Rep., 507, the same court, at p. 513, declared:

> "It cannot be controverted that, in ordinary circumstances, a number of independent companies might combine for the purpose of controlling or acquiring terminals for their common but exclusive use. In such cases other companies might be admitted upon terms or excluded altogether. If such terms were too onerous there would ordinarily remain the right and power to construct their own terminals."

And in that case the court held the power of the combined terminal companies in the City of St. Louis to make those terms, to be a restraint upon commerce and a violation of the Anti-Trust Act, only by reason of the fact that the topographical situation of St. Louis made it impossible for other roads to enter the city at all except by the grace of the combined terminal associations, defendants to that suit.

Such facilities as the team tracks here withdrawn from the service of other carriers and from intra-city transportation are facilities which cannot be

granted to all shippers and all carriers without so congesting such terminals as to destroy their use for any shipper or carrier. Complainants have, therefore, the right to either reserve such terminal facilities as these for their own shippers and their own business or else allow them to such other carriers under such contract as they may consider most advantageous for their own business and that of the shippers along their lines.

INTRACITY SWITCHING IS BEYOND THE OBLIGATION OF COMPLAINANTS, AND CANNOT BE IMPOSED UPON APPELLANTS BY THE LEGISLATURE.

The business of transportation between carriers and points within a city is a very different business from that of ordinary railroad transportation, or hauls the width or breadth of any one or more states, and is beyond the calling of railroad companies not incorporated for such a distinct purpose.

A railroad not incorporated as a belt line or switching company, and not having undertaken either by its charter or contract to perform such services, cannot be compelled so to do.

State ex inf. v. *Terminal Railroad Assn. of St. Louis*, 182 Mo., 284.

In that case the Attorney General of the State of Missouri was proceeding to exclude the respondent corporation from all corporate franchises, and to annul its charter, on the ground that it had violated the law of Missouri which prohibited a railroad com-

pany from consolidating with another company which owned or controlled a parallel or competing line. These companies, alleged to be parallel or competing railroads by the Attorney General, were, as a matter of fact, terminal lines, whose business was that of switching from the terminus of one railroad to the terminus of another, and engaging in purely intracity transportation. The Supreme Court of the State of Missouri, in refusing the writ of *quo warranto*, held (pp. 296, 297):

> "Thus when the convention was in session there were in the state corporations engaged in carrying over their railroads freight and passengers from one city to another, and other corporations engaged in transferring the cars brought by a railroad to its terminus in a city to some other point in the same city or to a common terminus of all railroad traffic in that city. The characters of the business of the two kinds of corporations were essentially different, though both related to railroad traffic. The one was railroad business in its ordinary meaning, the other railroad business of a special character."

And on page 296 that court held that the words "railroad companies" as used in the Constitution of that state, and as ordinarily understood, mean railroad companies "whose lines are parallel or competing in the sense above mentioned, *tracking the state through its length or its breadth.*"

Such intracity transportation or switching service being, as held in the last quoted case, a very different occupation from that of ordinary railroad transportation or hauls through the length or breadth of one or more states, and also being, as

held in *Louisville, etc., R. R. Co.* v. *Stock Yards Co.*, 212 U. S., 132, at 145, beyond the calling of a railroad company not incorporated for such a purpose, it is evident that any act or acts of the Michigan Legislature and the orders of the Michigan Railroad Commission under such acts, complained of in these bills, requiring or attempting to require such services of carriers not incorporated, as it is alleged appellants were not incorporated, for such a purpose, are null and void as against appellants.

Louisville, etc., R. R. Co. v. *Stock Yards Co.*, *supra*, at page 145.

VI.

TO REQUIRE ONE CARRIER TO PERFORM PURELY TERMINAL SERVICES FOR ANOTHER INTERSECTING ITS LINE, IN A CITY, AT A MERE SWITCHING RATE, IS TO REQUIRE ONE CARRIER TO GIVE OVER TO ANOTHER ITS COSTLY TERMINALS.

This follows from the discussion under the previous points. Such a requirement will allow any carrier to construct its line up to a point of intersection with another carrier, and demand the use of the terminal facilities, which the latter has erected at the cost of millions of dollars (as in the present controversy, it has been shown, that the freight terminals of each appellant in the City of Detroit represent a value of more than a million dollars and could not be replaced for that sum, Abst., 5; Rec., 4, 109), for the payment of a mere switching or transportation charge. This would be clearly a taking of property within the inhibition of the Fourteenth Amendment. One carrier cannot be required to erect terminals for another, neither can it be required to

give the use of its terminals already erected and paid for to such other carriers. The duty of a carrier interstate and intra-city, not incorporated as a belt line or terminal company, ends when it has brought to a convenient point in a city the freight destined to consignees therein; and by "convenient point" is not and cannot be meant such a point as may be convenient to each individual shipper. It does not and cannot mean that a railroad must construct terminals throughout the length and breadth of each city, nor that it must give its terminals over to other lines entering that city for the convenience of shippers located a little nearer such terminals. It can only mean that the railroads shall provide reasonable access to the tracks and terminals convenient for loading and unloading in a proper and expeditious manner. When such facilities are furnished, as it is averred in the sworn bills and not denied in the answer, that appellants do so furnish them (Abst., 5; Rec., 4, 109), the duty of such a carrier is fulfilled. And neither the orders of the Commission nor the statutes of a state can require it to permit other lines to use its terminals to save drayage for a shipper.

This very service was prayed by the Central Stock Yards Co. in the Louisville case, *supra*, and allowed by the Court of Appeals of Kentucky. Judgment in that case was reversed and remanded without qualification by this honorable court (212 U. S., 132, at 144).

In that case the Central Stock Yards was just outside the city limits. (*Louisville and Nashville R. R. Co. v. Central Stock Yards*, 97 Southwestern Reporter, 778, at 781.)

If the service cannot be required where the movement is from a point just outside the city limits *a fortiori* it cannot be required where the movement is within a more limited area, and constitutes purely local service that belongs to the function of a belt or terminal line and not to an interstate carrier.

VII.

NO SAFEGUARDS ARE PROVIDED AGAINST INJURY TO OR DETENTION OF THE CARS OF ONE CARRIER WHILE ON THE LINES OF ANOTHER RAILROAD UNDER COMPULSION OF THESE REGULATIONS.

Neither the order here complained of, nor the statutes under which it purports to have been entered, provide protection for the carrier turning over its cars to another carrier, either for damage to cars or for loss of state and interstate traffic that would otherwise be carried by the carrier owning those cars.

In speaking of the possibility of a valid law, requiring the interchange of cars by one carrier with another for through traffic, before proceeding to hold that the requirement of interchange and giving the use of cars or terminals for purely local traffic was a violation of the Fourteenth Amendment, this court, in *Louisville & Nashville R. R. Co.* v. *Stock Yards Co., supra,* 212 U. S., 132, said, at p. 144:

> "It is enough to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulations for his protection from the loss or undue detention of cars, and for securing due compensation for their use. The Constitution of Kentucky is simply a universal un-

discriminating requirement, with no adequate provisions such as we have described. The want cannot be cured by inserting them in judgments under it. The law itself must save the parties' rights, and not leave them to the discretion of the courts as such."

VIII.

CONGRESS HAS TAKEN OVER THE WHOLE SUBJECT MATTER OF TERMINALS AND THE REGULATION THEREOF AS TO CARRIERS ENGAGED IN INTERSTATE COMMERCE AND HAS EXPRESSLY ENACTED IN THE INTERSTATE COMMERCE ACT THAT CARRIERS SUBJECT TO THAT ACT SHALL NOT BE REQUIRED TO GIVE THE USE OF THEIR TRACKS OR TERMINAL FACILITIES TO OTHER CARRIERS ENGAGED IN LIKE BUSINESS. A LARGE PART OF THE TRAFFIC OF APPELLANTS THROUGH, INTO AND OUT OF DETROIT IS INTERSTATE. THE MICHIGAN STATUTES HERE COMPLAINED OF, SO FAR AS THEY REQUIRE APPELLANTS TO GIVE SUCH USE, ARE THEREFORE SUPERSEDED BY THE ACT OF CONGRESS. THE ORDER OF THE COMMISSION, PURPORTING TO BE MADE UNDER THOSE STATUTES AND ATTEMPTING TO AFFECT TERMINALS OF COMPLAINANTS, IS THEREFORE VOID.

The act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, April 13, 1908, and June 18, 1910, has the following provisions pertaining to the terminals of appellants as attempted to be affected by the order of the Commission, dated April 10, 1912, here complained of:

"Sec. 1. * * * The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons

or property designated here, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery * * * and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

"Sec. III. * * * Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; *but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.*"

The team tracks and other terminal facilities to be employed for the services required by the order of April 10, 1912, and the statutes under which defendants rest the validity of that order, are the team

tracks and other facilities of these complainants employed, as set forth in the bills of complaint, largely for interstate commerce. (Abst., 4; Rec., 3, 107; Affidavits, Abst., 27; Rec., 80, 175.) For this commerce such team tracks and terminal facilities are a necessity. Without team tracks, side tracks and other terminals such commerce could not be properly carried on. Appellant carriers are engaged largely in interstate commerce between the states and foreign commerce between such states and the Dominion of Canada. (Abst., 3; Rec., 3, 107.) These team tracks, as well as the other terminals appellants use for this business, are therefore devoted to and controlled by Federal Acts enacted on the subject.

No doubt such of their facilities as are employed for intrastate commerce, so far only as they are used for such commerce *exclusively*, can be regulated by the state, provided such regulations do not violate the Fourteenth Amendment or interfere by their necessary effect with interstate commerce. Again, the question of the power of the state to regulate the rate for services in connection with intrastate commerce actually offered or carried on by appellants over such tracks and terminals is not under consideration; nor its right to exercise its police power in the matter of speed, signals of trains, etc., in protection of its own citizens.

But when Congress has legislated as to the use or regulation of specific facilities or instrumentalities employed in interstate commerce, whether such regulations be positive or negative, qualified or sweeping, and whether they contain words of exclusion of state

authority or not, the very expression of the will of Congress ousts the state of further jurisdiction over said instrumentalities or facilities, regardless of the coincident employment of such persons or property in intrastate commerce. That no words of exclusion, no prohibitions against the actions of the state are necessary, has been laid down by this Honorable court in interpreting the various commerce statutes in frequent decisions.

In *Northern Pac. Ry.* v. *Washington*, 222 U. S., 371, the Hours of Service Act of Congress was under consideration. (*) In that Act, no exclusion is expressed in any clause or word of the power of the state to govern employes occupied at the same time in intrastate commerce. The first section of that Act, like the first section of the Interstate Commerce Act, defined the extent of the Act only by enacting that it should apply to common carriers, their officers, agents and employes engaged in interstate commerce in similar terms as are contained in the first section of the Act to Regulate Commerce.

Under Section 5, the effect of the Service Act was postponed until one year after its passage. The Northern Pacific Railroad Company, appellant in that case, in operating a train on its road in the State of Washington, permitted some of the train crew to remain on duty more than sixteen consecutive hours. That train, although moving from one point to another in the State of Washington, "was hauling

(*) An Act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon, approved March 17, 1907.

merchandise from points outside of the state, destined to points within the state, and from points within the state to points in British Columbia, as well as in carrying merchandise which had originated outside of the state and was in transit through the state to a foreign destination." (P. 375.)

The Attorney General of the State of Washington had commenced the proceeding in consideration, in that state, to recover penalties for the violation of the state law regulating the hours of service of railway employes with provisions greatly resembling those of the Act of Congress.

The defense "was based upon the assertion that the train was an interstate train and was not subject to the control of the state because within the exclusive authority of Congress manifested by the enactment of Congress upon that subject." From a judgment in favor of the state and approved by the supreme court thereof, writ of error was taken to the Supreme Court of the United States.

This court held:

1.

> "This transportation was interstate commerce and the train was an interstate train, despite the fact that it may also have been carrying some local freight. In view of the unity and indivisibility of the service of the train crew and the paramount character of the authorities of Congress to regulate commerce, the act of Congress was exclusively controlling. *Southern Railway Co.* v. *U. S.*, 222 U. S., 20" (p. 375).

2. That the expression of the will of Congress ousted the state of jurisdiction and power to act

upon the subject matter from the moment that will was expressed (p. 378).

3. That the fact alone that Congress has manifested its purpose to bring the subject within its control removes the subject at once from the sphere of the operation of the authority of the state (p. 378).

Mr. Chief Justice White, in announcing the opinion of the court, said (p. 378):

> "But we are of opinion that this view is not compatible with the paramount authority of Congress over interstate commerce. It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a state to apply its police power for the purpose of regulating interstate commerce in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject, or manifests its purpose to call into play its exclusive power. This being the conceded premise upon which alone the state law could have been made applicable, it results that as the enactment by Congress of the law in question was an assertion of its power by the fact alone of such manifestation that subject was at once removed from the sphere of the operation of the authority of the state."

It is to be noted that in that case not only for the period of a year, or until Congress chose to act specifically, was there no affirmative regulation of employes engaged in interstate commerce; and not only was there no exclusion in terms of the power of a state to act; but the statute of the state, there declared to be superseded, purported to deal only with employes engaged in intrastate commerce and was in

similar terms and not in contradiction, to the provisions that Congress had enacted for operation at the end of that term.

The employes involved in that case, just as are the facilities and instrumentalities of commerce involved in the present issue, were engaged at the same time in intrastate commerce, in transporting, handling, accepting and delivering merchandise consigned from a distance to points within that state. There is no hint in that decision of, nor is it based on the proportions of the interstate commerce and intrastate commerce in which these employes were coincidently engaged. And yet this court held that the act of the State of Washington, similar in terms, for a similar purpose, in spirit the same, with no provisions conflicting with the similar regulations provided by Congress for the same subject matter, was superseded, inoperative and void as to employes engaged in intrastate commerce when the same employes were also in the conduct of interstate commerce. The mere expression of the will of Congress to enter the field was held to exclude the state from a place therein, even where intrastate commerce was at the same time concerned; and the absence of all regulation of the subject matter during any period after the expression of such will did not, it was declared, affect the question, nor leave the state the power to take a single step in the direction of affecting or controlling the subject matter, even as to the part played therein by intrastate commerce.

The exclusive power of Congress over instrumentalities and facilities engaged in interstate commerce, regardless of their immediate use, even at

the time employed in purely intrastate commerce, was declared by this court in the case of *Southern Railway Co.* v. *U. S.*, 222 U. S., 20. In that case the interpretation of the Safety Appliance Act with reference to cars used in intrastate commerce, unconnected at that particular moment with cars used for moving interstate commerce, was involved.

The Act of March 2nd, 1903, 32 Stat., 943, C. 976, had amended the earlier one and enlarged its scope by declaring, *inter alia*, that its provisions and requirements should "apply to all trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce, and in the territories and the District of Columbia, and to all other locomotives, tenders, cars and similar vehicles used in connection therewith." By that amendment the application of that act was enlarged only to the extent that its definition of the carriers within its scope was the same as the definition in Section 1 of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplemental thereto.

Under this Safety Appliance Act civil action to recover penalties for the violation thereof was brought by the government against the Southern Railway Company for hauling over a part of its railroad five cars, the couplers upon which were defective and inoperative. Of these five cars three were employed at the time in moving intrastate traffic; and this court expressly remarked in that case that "it does not appear that the use of the three was in connection with any car or cars used in interstate commerce." The line of defendant

was part of a through highway, over which traffic was continually being moved from one state to another. The railroad set up as a defense that such hauling in interstate commerce, "although upon a railroad upon which traffic was continually being moved from one state to another was not within the prohibition of the Safety Appliance Act of Congress; and second, if it were, those acts should be pronounced invalid as being in excess of the power of Congress under the Commerce Clause of the Constitution."

From judgment in favor of the Government, defendant brought the case before this court by direct writ of error. After having ruled that that act in terms applied to cars employed in intrastate commerce, independently of their being moved at the same time in any train containing cars engaged at the same time in interstate commerce, Mr. Justice Van Devanter, in delivering the opinion of the court, said (p. 26):

> "For these reasons it must be held that the original act as enlarged by the amendatory one is intended to embrace all locomotives, cars and similar vehicles used on any railroad which is a highway of interstate commerce.
>
> "We come, then, to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, 'Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the

acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement?' Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate? If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce."

So in the present case, the intrastate character of services required and the uses demanded of the property of appellants by this order, and asserted by appellees to be required under the statutes of the state herein sought to be enjoined as unconstitutional, so far as they require or may be held to require these services, is no objection to the assertion of the power of Congress over this subject matter, nor to the exclusion of the state from all control therein by the expression of the will of Congress.

It is to be noted that not only has Congress, in Section 1 of the Act to Regulate Commerce, applied that act to all railroads engaged in interstate commerce, and has included in that act "all switches, spurs, tracks and terminal facilities of every kind, used or necessary in the transportation of persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property," and has legislated upon the subject of interchange of traffic between carriers so engaged in interstate commerce (Sec. 3), and specifically as to through routing (Sec. 15), but it has expressed its will to be that those provisions "shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." (Sec. 3.)

It has not in terms excluded the action of the state in reference to those facilities, when used in interstate commerce; it has not taken from the state the right to make needful regulations for the receiving, delivering, storing or handling of interstate freight; but it has expressed itself as to the manner in which the instrumentalities used and employed in interstate commerce, regardless of their coincident use in intrastate commerce, shall *not* be required. We are not here contending that the state may not impose such rates and make such reasonable regulations as to the use of these team tracks when used for or employed in intrastate commerce, as may seem to them within the bounds set by the Constitution. As far as the contentions in this case go, they may make those rates, require such notice of the arrivals of freight

as they may deem proper, provide bills of lading, make rules of demurrage, require proper places for the receiving and delivering of traffic at the terminals of the company over which the traffic arrives at the city of its destination, but they may not require, for the purpose of receiving or delivering freight, that the carrier give the use of its terminals engaged in interstate commerce or the use of its team tracks engaged in interstate commerce, or the use of any other of its terminals engaged in such commerce, over to another carrier, contrary to the express will of Congress upon this very point.

In Detroit, as shown by the bills, the team tracks and hold tracks of appellants are used for both interstate and intrastate commerce, and a large part of the traffic of appellants is interstate and foreign commerce. These team tracks may have on them cars, of which some may contain goods to be delivered to a point in another state; and others, merchandise consigned to a point within the same state. They are used for loading and unloading freight in carload lots. Cars may become mingled. The loading and unloading of both state and interstate freight may be carried on at the same time on the same track, or the one may follow the other by a greater or less length of time. Cars are constantly coming into these terminals over the lines of appellants requiring unloading upon these tracks; while other cars await loading for shipment, for carriage to points either within or without the state.

Can it be said that whenever a given space is occupied for a short period by an intrastate car,

though the same track is used equally for interstate commerce, that so many feet of rails lose their interstate quality; slip out of the control of Congress; that it becomes an intrastate facility to the exclusion of the power of the Federal Government to determine how it shall be used, either at that moment, or for any period? The affidavits show that these team tracks "are no greater in capacity than is absolutely required for the business (both interstate and intrastate) above named." (Abst., 27; Rec., 80, 174-5.)

As will be shown under Point IX, *infra*, the switching, delivery and handling of cars over these team tracks is inextricable and commingled. The demands of Congress, both state and interstate, are either coincident or succeed each other in different proportions without rule or power to determine beforehand their amount or the time or steps necessary for their proper handling. It is also shown that they are daily crowded to their capacity in carrying on interstate and intrastate commerce that arises and departs over the lines of appellants. To require these appellants to give the use of their team tracks for these purposes forbidden as to interstate commerce by the Act to regulate that commerce and there expressed to be functions not within the intention of the Federal Government for instrumentalities employed in that commerce, will inevitably require interstate commerce to wait and be put aside while those team tracks are being devoted to the use of other carriers engaged in local, intracity switching, dignified by the name of transportation. As

said by Mr. Justice Van Devanter in the quotation from the *Southern Railway* case set forth above:

> "Besides the several trains on the same railroad are not independent of the point of movement and safety, but are interdependent, for whatever brings delay or disaster to one or results in disabling one of its operatives is calculated to impede the progress and impair the safety of other trains."

Congress having spoken, the state cannot presume that it has not spoken as far as it intends the matter to be regulated. The mere enactment of legislation upon the particular point of tracks, crews, trains, machinery or employes used in interstate commerce automatically excludes the state from speaking upon the subject, regardless of how general the Federal Act may be. It is enough that Congress has spoken, for it must be presumed that it has considered the subject-matter and laid down all the regulation it intends shall be imposed.

In *Pedersen* v. *Delaware & Lackawanna R. R. Co.*, 33 Sup. Ct. Rep., 648, defendant railroad company was operating a railroad for the transportation of passengers and freight in both interstate and intrastate commerce. Plaintiff was an iron worker employed by the defendant in the alteration and repair of certain of its bridges and on the afternoon of his injury was under the direction of a foreman carrying certain bolts to a bridge to be repaired in the morning, which bridge was regularly used for both interstate and intrastate commerce (as in the present case team tracks, side tracks and other terminal facilities of complainants within the City of Detroit are used and necessary for both interstate and in-

trastate commerce). While carrying such bolts over a certain other bridge he was run down and injured by an intrastate passenger train, of the approach of which its engineer negligently had failed to give any warning.

In discussing the character of this bridge as an instrument of interstate commerce, regardless of its coincident use for traffic within a state, Mr. Justice Van Devanter said (page ~~638~~): 107-2.

> "Tracks and bridges are as indispensable to interstate commerce by railroad as are engines and cars, and sound economic reasons unite with settled rules of law in demanding that all of these instrumentalities be kept in repair. The security, expedition and efficiency of the commerce depends in large measure upon this being done.
>
> * * * * * * * *
>
> "True, a track or bridge may be used in both interstate and intrastate commerce, but when it is so used it is none the less an instrumentality of the former; nor does its double use prevent the employment of those who are engaged in its repair or in keeping it in suitable condition for use from being an employment in interstate commerce."

So, in *St. Louis, S. F. & T. Ry. Co.* v. *Seale*, 33 Sup. Ct. Rep., 651, the rule was laid down (p. 652): 229 U.S. 13

> "If the Federal statute was applicable, the state statute was excluded by reason of the supremacy of the former under the national Constitution. Second Employers' Liability Cases (*Mondou* v. *N. Y. N. H. & H. R. R. Co.*), 223 U. S., 1, 53; * * * *Michigan C. R. Co.* v. *Vreeland*, 227 U. S., 59, 67; 33 Sup. Ct. Rep., 192, 194."

Nor, again, can it be contended, as it was urged below, in order to remove the question from the effect of legislation by Congress, that for complainant to take a car from its junction point with another carrier and haul it to its own team tracks, all within the same city, is, as to interstate commerce, a switching movement, but as to state commerce a transportation movement; that as to interstate commerce it is requiring a railroad to give the use of its track to such other carrier; and as to intrastate commerce it does not come within that definition. It is apparent that this is to simply beg the question and cloud the issue. Transporting a car from one part of a city to another is no part of an interstate carrier's legitimate business. And where the tracks and terminal facilities of a carrier are demanded for the purpose of such a movement only, they are required for a purpose outside their railroad function.

The object of railroad carriage in general, save as to those lines incorporated as belt or terminal companies, has from the beginning been to connect various communities, corporate or incorporate, and whether separated by a few miles or many, and not to serve the various parts within a city itself. That latter has been accomplished by the local express, the dray, the motor truck, and the street railroad. Thus, in *Omaha & C. B. Street Ry. Co.* v. *Interstate Commerce Commission*, 33 S. Ct., 890, it was held that street railroads carrying passengers across a state line are

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not governed by the Interstate Commerce Act, which applies to passengers or property by railroad. Yet such a line is a common carrier of passengers by rail, and carries such passengers from one side of a state line to the other, back and forth between the two states of Nebraska and Iowa. But a carrier, though operating across a state line, which merely connects various portions of a city, was not within the intendment of the act which dealt with carriers by railroad in the ordinary sense. Carriers between communities, not in a community; carriers between cities, not in a city, are the carriers within the purview of that statute.

IX.

A SERVICE THAT INTERFERES WITH INTERSTATE COMMERCE CANNOT BE IMPOSED BY A STATE. A STATUTE ATTEMPTING TO IMPOSE SUCH SERVICE IS VOID.

Each of the bills of complaint avers as to the effect of the order of Michigan Railroad Commission, dated April 10, 1912, and the services so attempted to be required of these railroads (Rec., 11-116):

> "That the use of orator's team tracks for the purposes above set forth results in such congestion of said tracks and of orator's other terminals as to constantly impede the movement interstate and intrastate over orator's tracks for the purpose of which movement orator and the lessors of orator in this state were incorporated."

That to require these terminals for the services here in question not only caused congestion in the

past but will necessarily overtax the capacity of complainants' tracks in Detroit, cause congestion of traffic on said tracks and interfere with the traffic of complainants, both interstate and intrastate, although the terminal facilities of complainants are *sufficient, while only sufficient* to accommodate the business reasonably to be expected—that is, interstate and inter-city, are the statements contained in the twelve affidavits in support of these bills.

It must be borne in mind and again pointed out that this case does not present the question of the power of the state to regulate charges for services rendered and to regulate the manner of rendering such services so long as such services are voluntarily afforded by the carriers, but the state cannot either control or direct instrumentalities of interstate commerce nor *a fortiori* can it require of such instrumentalities for what it may deem the convenience of its internal commerce, uses and functions inconsistent with the employment of such instrumentalities in interstate commerce or contrary to the expressed will of Congress as to the employment of such instrumentalities.

The bill and affidavits above referred to show direct and immediate interference with interstate commerce. The services here demanded are refused by the carriers, unconditionally, and have been declared by Congress to be such services as cannot be required by the Interstate Commerce Commission, in that statute which gave that Commission the fullest and most complete power over every instrumentality of commerce here involved. The use of these facilities devoted to interstate commerce

as required by the order of June 10 is contrary to the express policy of Congress.

A fortiori, when services so demanded directly interfere with the conduct of interstate commerce over these rails, the statute imposing such services is void as well as all orders of the Commission attempting to administrate them. As so ably expressed in the brief prepared by the late Solicitor General Lloyd W. Bowers, and quoted with approval in the opinion of this Honorable court, Second Employers' Liability Cases, 223 U. S., 1, at page 48:

> "Interstate commerce—if not always, at any rate when the commerce is transportation—is an act. Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable or more efficient. The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted; if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly or unsafe or otherwise inefficient; and if the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous, those bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical and less secure. Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents

> and instruments perform the work of interstate commerce, whenever such legislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the Interstate Commerce Act."

Not only did the twelve affidavits filed in support of these bills aver direct interference with interstate commerce, frequent and material, but that such interference is inevitable is apparent from common knowledge and observation. That train after train is made up of cars both state and interstate has been shown by the frequent cases in which the Employers' Liability Act was involved and the question arose of whether the employe injured came under the Act by reason of the fact that some of the cars in the train were interstate. It is apparent that if team tracks of these complainants shall be used for the purpose of unloading cars which they are required to receive from other carriers at junction points within the same city and to be used for loading cars which they shall be required to deliver to other carriers at those junction points, all for movements in which complainants have no part save the haul from these tracks to these junction points, and all within the same city, especially when as set forth in these affidavits, their terminal facilities, team and other tracks are no greater than absolutely necessary for their traffic, interstate and intrastate (but not intra-city or of the kind here named), that this interstate traffic must inevitably be congested, impeded, embarrassed and delayed.

X.

THE SERVICES REQUIRED BY SAID ORDER INTERFERE WITH, DELAY AND EMBARRASS THE CARRIAGE OF THE UNITED STATES MAILS OVER THE LINES OF THESE APPELLANTS. THAT ORDER, AND THE ACTS OF THE LEGISLATURE OF MICHIGAN UNDER WHICH IT PURPORTS TO HAVE BEEN MADE, SO FAR AS SAID ACTS PRETEND TO CONFER AUTHORITY TO ENTER THAT ORDER, ARE VOID.

The affidavit of deponent Cunningham in support of the bill of the Grand Trunk states that said company is "daily engaged in the handling of passengers and United States mails, and that said mails are delayed by the congestion of said team track terminals of said company in Detroit, and must necessarily be delayed, so long as said company is required to receive upon its team tracks cars switched to it in Detroit from other railroads and private sidings on other railroads, in obedience to the requirements of said statutes and said order issued thereunder." (Abst., 27; Rec., 80.)

As Congress has, under the seventh clause of Section 8 of Article 1 of the Constitution, given to Congress the exclusive control of postoffices and post roads, it follows that any action of the state, whether by its Legislature or by a Commission acting under delegated powers, that delays, hinders or embarrasses the carrying of mails, is a violation of that clause. This is especially true where the use is one which is beyond the purpose or scope of the calling of an interstate and inter-city carrier, as here. That the constant switching between the rails of carriers to and from their connecting points within the limits of a city would necessarily delay other

traffic passing over those lines, and is a necessary result of requiring such services, could be predicated almost without proof. A belt line constantly engaged in taking and receiving from other carriers cars for local delivery would hardly be chosen by the Government for its mail contracts, and the services demanded by the order here complained of and by these acts of the Michigan Legislature from which defendants pretend to derive their authority, if those acts be so construed as to require such services, will be to turn appellants and other carriers having terminals within that city into belt or terminal railroads requiring the use of their connecting tracks for purposes of constant interchange and switching —transportation, according to appellees; but drayage by steam, as a matter of fact.

XI.

THE RIGHT OF A CARRIER TO CONTINUE THE TRANSACTION OF LOCAL BUSINESS WITHIN A STATE IN WHICH IT CARRIES ON BOTH INTERSTATE AND INTRASTATE COMMERCE CANNOT BE MADE TO DEPEND UPON ITS SUBMISSION TO A CONDITION PRESCRIBED BY THAT STATE WHICH IS HOSTILE TO THE FEDERAL CONSTITUTION.

The right of a carrier to continue the transaction of local business within a state in which it carries on both interstate and intrastate commerce cannot be made to depend upon its submission to a condition prescribed by that state which is hostile to the Federal Constitution.

Again, as shown under Point IX, *supra*, such services when given actually did interfere with interstate commerce. It therefore cannot be required of

a carrier even as a condition of the performance of intrastate commerce. *Western Union Tel. Co.* v. *Kansas*, 216 U. S., 1, 27, 37. At the latter page this court said:

> "We cannot fail to recognize the intimate connection which, at this day, exists between the interstate business done by interstate companies and the local business which, for the convenience of the people, must be done or can generally be better and more economically done by such interstate companies rather than by domestic companies organized to conduct only local business. It is of the last importance that the freedom of interstate commerce shall not be trammeled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States." * * *

Page 47:

> "The right of the Telegraph Company to continue the transaction of local business in Kansas could not be made to depend upon its submission to a condition prescribed by that state which was hostile both to the letter and spirit of the Constitution."

And in that same case Mr. Chief Justice White, concurring, held (pp. 40 to 51) that a corporation could not be required to submit to the exercise of arbitrary and unconstitutional conditions as the price of remaining within the state in which it has acquired property and done business before the attempted creation of such conditions. As this service interferes with interstate commerce, it cannot be imposed in any event. As appellants perform both state and interstate commerce within the state, even aside from the fact that large property was acquired

and business done long before the advent of the statutes here in question, they cannot be compelled to perform these services as a condition of continuing to do intrastate business.

XII.

THE ACTS OF THE MICHIGAN LEGISLATURE UNDER WHICH THE ORDERS OF THE COMMISSION COMPLAINED OF WERE MADE ARE SO INCONSISTENT AND UNCERTAIN AS TO BE UTTERLY NULL AND VOID.

To require a carrier to receive and transport over its tracks the merchandise and cars of any other corporation or individual having connecting tracks is to require it to give the use of its tracks and terminal facilities to another railroad engaged in like business.

> *Ky. & I. Bridge Co.* v. *L. & N. Ry. Co.*, 39 Fed., 537, at 628.
>
> *Little Rock & M. R. Co.* v. *St. Louis Ry.*, 63 Fed., 775, at 778-780 (C. C. A., 8th Circuit).

Yet the Michigan statutes, while requiring carriers to perform the first named services specifically exempt them from giving their tracks and terminal facilities to another railroad engaged in like business.

> Act 139 of 1911, of the Legislature of the State of Michigan, Sec. 7, "a", "c" and "d". (Footnote, pp. 13, 14.)

These Acts, therefore, under which the orders complained of were entered, are so inconsistent and uncertain that they can be given no sensible mean-

ing and are, therefore, null and void as to complainant.

State v. *West Side Ry. Co.*, 146 Mo., 155.
People v. *Briggs*, 193 N. Y., 457; 86 N. E., 522, at 523.

This is a penal statute, and will therefore be strictly construed. Words and phrases will neither be read into nor taken out of the statute in order to give it effect.

United States v. *Wiltberger*, 5 Wheat., 76.
United States v. *Sheldon*, 2 Wheat., 119.
United States v. *Reese*, 92 U. S., 214.
United States v. *Gooding*, 12 Wheat., 460.

The penalties for violation of these Acts and orders made thereunder are found in Sections 43 and 46 of Act 300 of 1909 of the Legislature of Michigan, set in this brief, at page 17, *supra*.

The provisions include heavy fines and jail imprisonments.

In *State* v. *St. Ry. Co.*, 146 Mo., 155, p. 168, the court held:

> "There must be a competent and efficient expression of the legislative will. *State* v. *Partlow*, 91 N. C. Loc. Cit., 552.
>
> "In *Drake* v. *Drake*, 4 Dev. Loc. Cit., 115, Chief Justice Ruffin said: 'Whether a statute be a public or a private one, if the terms in which it is couched be so vague as to convey no definite meaning to those whose duty it is to execute it, either ministerially or judicially, it is necessarily inoperative. The law must remain as it was unless that which professes to change it, be itself intelligible.'
>
> "In *Ward* v. *Ward*, 37 Tex. Loc. Cit., 392, the

court declared: '* * * but when we find ourselves totally unable to administer a law by reason of its uncertainty or ambiguity, or believe it to be unconstitutional, we shall not hesitate to discharge the duty the law devolves upon us. We do not mean to say, by any means, that the Act of November 1, 1871, is unconstitutional, but we do say that it is nugatory and void for want of some adequate provision in the law to carry out its execution.' See, also, *Commonwealth* v. *Bank of Pennsylvania*, 3 Watts. & Serg., 173; Sutherland on Statutory Construction, Secs. 261 and 431."

* * * * * * * *

"The courts cannot venture upon the dangerous path of judicious legislation to supply omissions or remedy defects in matters committed to a coordinate branch of the Government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers."

To the same effect see:

United States v. *Reese et al.*, 92 U. S., 214, 219.

Tozer v. *United States*, 52 Fed., 919.

Louisville & Nashville R. R. Co. v. *Railroad Commission of Tennessee*, 19 Fed., 679, 692.

The District Court below overruled this contention, holding (Abst., 58; Rec., 212):

"It is urged that to require a carrier to receive or transport over its tracks the merchandise and cars of any other corporation or individual having connecting tracks is to require it

to give the use of its tracks and terminal facilities to another railroad engaged in like business, and that the act is thus so inconsistent and uncertain as to be utterly null and void. We think the two provisions in question can be so construed as to give effect to both.

"The provision in subdivision 'a' above referred to was contained in the Act of 1907, construed by the Supreme Court of Michigan, *Central R. R. Co.* v. *Michigan Railroad Commission*, *supra* (132 N. W., 1068), in which case (although the provision in question in subdivision 'a' was not referred to in the opinion) the court upheld the provision requiring interchange of traffic and track connections, including the transporting of cars from another railroad. Moreover, subdivision 'd' was enacted by way of amendment subsequent to the original adoption of subdivision 'a'. If either provision were required to give way, it would seem that the latter would prevail."

The reenactment of that clause, and exception made thereto, Act 370, are only the more evidence of the confusion before this amendment. Now, as shown in Point II, *supra*, the act is consistent. The repetition of the restrictive clause is evidence of its continued approval by the Legislature. But prior to this amendment, when the order of June 10, 1912, was entered, Section 7 of Act 239, of 1911, was clearly inconsistent, and incurable save by amendment. That amendment cannot, however, cure this order, entered prior thereto.

XIII.

RAILROAD CARRIERS CANNOT BE COMPELLED TO PERFORM A SERVICE WHICH IS NOT WITHIN THE TERMS OF THEIR CALLING, AND FROM WHICH THEY HAVE VOLUNTARILY WITHDRAWN. THE MERE EXTENSION OF A SERVICE OR A FACILITY TO THE PUBLIC BY A CARRIER, WHICH IT IS NOT REQUIRED UNDER THE LAW TO GIVE, WILL NOT PREVENT THAT CARRIER FROM WITHDRAWING THAT SERVICE OR FACILITY FROM THE USE OF THE PUBLIC AT ANY TIME IT MAY SEE FIT.

Under the tariff suspended by the order of the Commission dated April 19, 1912, as shown above, the use of appellants' team tracks was withdrawn from connecting carriers, industries and other team tracks within the same corporate limits. As appellants could not originally have been required to allow the use of the team tracks now withdrawn, so they cannot now be compelled to restore it.

This precise question was involved *In re Express* cases, 117 U. S., 1. The question arose as to the right of a railroad company to discontinue transporting the traffic of independent express companies over their lines, in the manner in which such traffic was usually carried and handled. This court held (p. 26):

> "The exact question, then, is whether these express companies can now demand as a right what they have heretofore had only as by permission. That depends, as is conceded, on whether all railroad companies are now by law charged with the duty of carrying all express companies in the way that express carriers when taken are usually carried, just as they are with the duty of carrying all passengers and freights

when offered in the way that passengers and freight are carried.

"The contracts which these companies once had are now out of the way, and the companies at this time possess no other rights than such as belong to any other company or person wishing to do an express business upon these roads. If they are entitled to the relief they ask it is because it is the duty of the railroad companies to furnish express facilities to all alike who demand them."

To the same effect are the other cases cited under Point XV of our Points and Authorities, *supra* (p. 47).

XIV.

ACTS CREATING NEW OBLIGATIONS, AND PREVENTING A TEST OF THE VALIDITY THEREOF BY IMPOSING ENORMOUS FINES AND POSSIBLE IMPRISONMENT AS THE RESULT OF AN UNSUCCESSFUL EFFORT TO TEST THAT VALIDITY, ARE UNCONSTITUTIONAL ON THEIR FACE.

The penalties for the failure to obey the provisions of this act and the orders of the Commission made thereunder are given in Sections 43 and 46 of Act 300 of 1909, quoted in full in the footnote on pages 17 and 18.

It will be seen that under these provisions the carriers may incur in the course of a single day's business fines amounting to thousands of dollars, and their officers, agents and employes may incur not only similar fines, but jail sentences running into years, while the validity of these acts is being tested in the court, should such a test result in a decision adverse to the carriers.

That such a statute is unconstitutional on its face,

and that jurisdiction exists in the Federal Court to enjoin the enforcement thereof, without regard to the question of citizenship, has been established by the authorities cited under Points I and XVI of our Points and Authorities, pp. 38, 47, *supra,* particularly in *Ex parte Young,* 209 U. S., 123. In discussing a similar statute, the court there declared (p. 148):

> "We hold, therefore, that the provisions of the acts relating to the enforcement of the rates, either for freight or passengers, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, without regard to the question of the insufficiency of those rates."

As shown under Point I of this argument, not only are threats of the Commission to enforce these penalties for the violation of the order in question set up in the bills, but in their answers appellees aver (Abst., 29; Rec., 88, 182):

> "The defendant, the Michigan Railroad Commission, admits that it intends to compel the said complainant to comply with the laws of the State of Michigan insofar as the same require interchange of traffic in the City of Detroit, and over the lines of railroads located in said city, and claimed to be owned and operated by complainant.
>
> * * * * * * * *
>
> "Admits that it intends to require complainant to continue said local switching business as is required by the laws of the State of Michigan, and that it will require complainant to allow the use of its terminals to receive from, transfer for, or deliver cars to other carriers

having terminals of their own within the corporate limits of the City of Detroit, at junction points with such other carriers in local movements in said city, to or from complainant's hold or team tracks within said city, insofar as the same are required by the laws of the State of Michigan."

And further answering, defendants say (Abst., 29; Rec., 89, 183):

* * * * * * * *

"The defendants admit that if said complainant shall refuse obedience to said order of said Commission dated April 10, 1912 (Ex. B, Defendants'); and if the complainant refuses to comply with the laws of the State of Michigan requiring them to make interchange of local traffic, said Michigan Railroad Commission and said Franz C. Kuhn, Attorney General of the State of Michigan, on behalf of said Commission and on behalf of the State of Michigan, will institute proceedings under the statutes of the State of Michigan against complainant, to enforce said order of suspension, and said laws of the State of Michigan."

These threats and admissions of appellees present a direct issue as to the validity of these penalty clauses of the statutes. As there is no provision in these statutes for a *bona fide* test of these laws of Michigan, providing new duties, and creating new misdemeanors, without incurring the aforesaid heavy pains and penalties, those provisions are *in toto* null, void and unconstitutional as depriving appellants of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution.

XV.

THE OPINION OF THE COURT BELOW WAS BASED ON A MISCONCEPTION OF THE SCOPE OF THE DECISION IN LOUISVILLE & NASHVILLE R. R. CO. V. CENTRAL STOCKYARDS CO., 212 U. S., 145. THE CASES CITED IN SUPPORT OF ITS RULING DO NOT SUPPORT ITS CONTENTIONS. WE HAVE DISCUSSED AT SUCH LENGTH THE POINTS OF LAW PRESENTED IN THIS CONTROVERSY, AND THE DECISIONS IN SUPPORT THEREOF, THAT WE SHALL MAKE BUT A BRIEF REVIEW.

1. We may point out first that the court excludes from consideration carload traffic "such as is brought upon team tracks or sidings within a city for delivery to a junction or transfer point, or intersection with another railroad track, whether or not the ultimate destination of such shipments is beyond such city or town" (Abst., 45; Rec., 204), on the theory that it was not clear to the mind of the court whether or not this class of traffic was included among those complained of in the bills. A reference to Abst., 8; Rec., 8, 9, 112, 113, will show that among the services, etc., required by the order of the Commission complained of here by appellants, were the following:

> "That complainant shall receive cars from another carrier at a junction point or physical connection with such other carrier, within the corporate switching limits of the City of Detroit, for transportation to complainants' team tracks; that complainants shall be required to allow the use of their team tracks for cars to be hauled from said team tracks to a junction point or physical connection with another carrier within said limits." (Abst., 8; Rec., 8, 112.)

* * * * * * * *

"That they shall be required to allow the use of their team or hold tracks to any industries on their own lines within said limits, or on the line of another carrier within said limits."

* * * * * * * *

"That they shall be required to receive cars from other carriers, to deliver cars to other carriers at junction points within said limits, where the beginning and conclusion of the movement *engaged in by complainants* are both within said limits." (Abst., 9; Rec., 9, 118.)

It will be seen that these general averments are in contrast to those that immediately follow. These speak of movements in which the part performed by appellants was confined to an intra-city haul. Movements of traffic, the origin and destination of which are both within the same city or town, are the subjects of other clauses of the same paragraph in which the above averments are found. The very traffic the District Court excluded from consideration, was clearly involved, and the issue presented.

2. Outside the cases dealing with through transportation (not local intra-city haul), the principal case on which counsel and the learned court below relied was that of *Chicago I. & L. Ry. Co.* v. *Railroad Commission*, 95 Northeastern, 364 (Supreme Court of Indiana).

Before we proceed to show that the same objections there urged were considered in the Kentucky Court of Appeals, and the same rulings there made in *L. & N. R. R. Co.* v. *Stockyards Co.*, 97 S. W., 78 (afterwards overruled by this court), it should be pointed out that the statutes under consideration by the Supreme Court of Indiana, in the case just cited, requiring interchange within the

limits of the city, expressly provide a measure of protection to a carrier so delivering its cars to another carrier, in respect to a return of the cars, and compensation for the use of the cars, for over-detention. (Burns' Stat., 1908, Sec. 5533, Par. F and M, 95 Northwestern, 364, at 370.) No such provisions occur in the Michigan statutes under consideration.

Both the Federal Court below, and the Supreme Court of Indiana, sought to distinguish the *Louisville* case on the ground of a difference of facts, that did not exist. As we have shown, the terminals involved in that case were not near, side by side, but eight miles apart. The carriage of cars there under consideration was called by the Kentucky court just as in these suits it was so named by the District Court and counsel below, appellees here, a "transportation" movement. The petitioner in that case sought not only for interchange of cars between the two carriers for movements between the Central Stock Yards and the Bourbon Stock Yards, but for the right to have cars coming from without the city, over the lines of the Louisville & Nashville, handed over to the Southern Railway within the city for local delivery. These movements are typical of the classes of service required by the order of April 10, 1912, in the present controversy; and the Court of Appeals of Kentucky, and the District Court below, ordered the defendants in both cases to yield their terminals and cars for those uses. The Court of Appeals in Kentucky nowhere intimated that the carrier would have to perform these services at the mere cost of

the movement. On the other hand, the carriers there were left free to fix their own rates, subject only to the statutes prohibiting discrimination or extortion. They were not subject to a Commission, but free to demand such compensation as they considered proper, limited only by those two ancient rules of the common law re-stated in the state Constitution. That case, and this, are in all material points the same.

Conclusion.

We submit that under the decision of this court in the *Louisville & Nashville R. R. Co.* v. *Central Stock Yards Co.* (212 U. S., p. 132), the services required by the order of the Commission of April 10, 1912, should not and cannot be required of these appellants.

The very nature of the functions of appellants, in the language so frequently used of such carriers, as "arteries" of interstate commerce connecting country with country, state with state, and city with city, not only precludes the idea of clogging the terminals of such companies with local municipal business, but impels the conclusion that the requirement of such local service would impede the primary obligations for a rapid and effectual interstate and intercity communication, and embarrass and interfere with such traffic.

The order of the Michigan Railroad Commission of June 10, 1912, and any and all statutes of that state purporting to authorize the same, are in vio-

lation of the Fourteenth Amendment to the Federal Constitution, and in contravention of the other clauses of that instrument invoked in the course of this argument.

Respectfully submitted.

G. W. KRETZINGER,
G. W. KRETZINGER, JR.,
A. B. BROWN,
Solicitors for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 282

GRAND TRUNK RAILWAY COMPANY OF CANADA AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY, Appellants,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. STARKEY, LAWTON T. HEMANS, GEORGE W. DICKINSON, and FRANZ C. KUHN, Members thereof, as the Michigan Railroad Commission, Appellees.

APPEAL FROM THE SUPREME COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF AMICUS CURIAE FOR APPELLEES.

GEORGE W. KRETZINGER,
GEORGE W. KRETZINGER, Jr.,
ALLEN B. BROWN,
Solicitors for Appellees.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 382.

GRAND TRUNK RAILWAY COMPANY OF CANADA AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY, APPELLANTS,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON, AND FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, APPELLEES.

REPLY BRIEF FOR APPELLANTS.

Preliminary Statement.

To simplify the issues in this controversy we desire, before entering upon the reply to the able brief and argument filed for appellees, to point out one phase of intracity switching which is not at this time either refused or questioned by

these appellants, namely, the switching of cars, loaded or empty, between industries on their own rails, and between such industries and the junction points of their lines with those of other carriers.

The Act to Regulate Commerce, approved February 4, 1887, as amended June 29, 1906, provides in section 1 that any common carrier shall, under certain terms and conditions, construct, maintain, and operate switch connections and private side tracks for the convenience of shippers. A similar provision is made in section 6 (*a*) and (*b*) of act 300 of the Public Acts of Michigan of 1909. Such shippers are, therefore, by the very terms of these two acts, separated into a class distinct from those receiving their freight from or delivering it to a freight house or team track on the terminal property of the railroads.

Inasmuch as industrial tracks are, for the most part, apart from and off of the right of way of appellants (Abst. 6, Rec., 5, 110), and as switching to these tracks does not therefore tend to congest the terminal properties of the railroads, these carriers are at present willing to continue to perform such service; moreover, as such industries, having spur tracks of their own, can be reached only from the road with which they immediately connect, the carriers must and do interchange cars for the purpose of switching to these industries, whose sidings would otherwise be of no avail, while the use of those sidings, instead of team tracks, for the placing of cars, relieves all carriers concerned.

This distinction is upheld in the case of *Railroad Commission of Arkansas vs. St. L., I. M. & S. Ry. Co.*, 24 I. C. C. R., 292, at 295, referred to and quoted from at another point in this reply.

The services which the appellants have withdrawn from all classes of shippers, both State and interstate, and refuse under any terms to perform are, therefore, as follows:

1. Switching between junction points of the lines of appellants with those of other carriers and team tracks of appellants, in either direction, where both such junction

points and team tracks are within the corporate limits of the city of Detroit.

2. Switching between industries on the lines of appellants and team tracks on said lines where both are within such limits.

3. Switching between team tracks and other team tracks where both such team tracks are on the lines of appellants and both are within said limits.

4. Any intracity movement, whether (*a*) the freight originates at or is consigned to a point without the city; or, (*b*), where the points of immediate origin and ultimate destination of such freight are both within the corporate limits of the city of Detroit, except in both such cases switching between industries and other industries on appellants' lines, or industries on appellants' lines and junction points as above noted.

We maintain that the right of appellants to refuse to perform all the services in the paragraphs numbered (1) to (4), above, has been specifically decided in the case of *Louisville & Nashville Railroad Company vs. Central Stock Yards Company*, 212 U. S., 132; that to require the use of appellants' property or to take appellants' cars for these functions is to deprive appellants of their property without due process of law; that for the State to require these services is a violation of the commerce clause of the Federal Constitution and in actual contravention of the will and policy of Congress, expressed in the Act to Regulate Commerce, upon the very subject of the instrumentalities and facilities of interstate commerce demanded for these uses; that by sections 1 and 3 of that act Congress has assumed exclusive control of these team tracks and terminals.

Further, the suspension order entered by the Michigan Railroad Commission April 10, 1912, and here specifically sought to be enjoined, is a violation of the Fourteenth Amendment, as depriving appellants of their property without due process of law, under the terms of a statute denying to appellants a fair and reasonable return for services ren-

dered and upon the value of their property employed therein, to be earned during the period of investigation, in the case of a rate suspended but subsequently adjudged to be reasonable; while for the charging of any rate subsequently by the local commission held to be unreasonable, the carriers are, under the specific terms of the same act, required to make reparation to each shipper who has paid such higher rate.

We now proceed to answer specifically, point by point, the contentions relied upon and set forth in the brief of learned counsel for appellees.

ARGUMENT.

I.

ANSWER TO POINT I OF BRIEF FOR APPELLEES ON THE HISTORY AND SUBSTANCE OF THE ACTS OF MICHIGAN RELATING TO INTERCHANGE OF CARS AND TRAFFIC.

Counsel maintains "that it has been the settled policy of the State of Michigan for more than thirty years to require the railroads to make connections with connecting lines to permit the transfer of loaded cars" (Brief pp. 6-13). In support of this contention he cites sections 15 and 16, act 79, of the Laws of 1873, and a portion of act 91, of the Public Acts of 1875, amending said section 15.

A reference to the sections of these acts, quoted on pages 7 and 8 of appellees' brief, will show that they in no phrase refer to or include switching movements within the corporate limits of any given city or town, or require one carrier to perform terminal service for another, which reaches with its rails the same municipality. This is confirmed by the enactment of subsection (*d*) of section 7 of act 139 of the Public Acts of Michigan of 1911 (given in full in our original brief, foot-note, page 14), which, for the first time in the

legislation of the State of Michigan, provides for and requires certain phases, hereinafter detailed, of the switching of traffic originating at and destined to points both within the corporate limits of the same city or town. To say that these earlier acts required these services would be to say that the legislature of the State of Michigan, in solemn session, enacted a foolish and unnecessary statute, and added to a series of statutes that had been for thirty years the settled law of Michigan a complete section, which made no addition to that law, stated nothing new, required no additional service, and merely furnished food for the printer. This would be to say that the same State of Michigan, by its legislators, sitting in two successive sessions and providing three amendments to section 7 of act 300 of the Public Acts of Michigan of 1909, in each of those sessions and in each of those three amendments, seriously enacted and re-enacted three times in succession a futile and absolutely tautological paragraph, a paragraph setting forth in separate phrases and careful language a series of distinct duties, the violation of any one of which called for penalties by fine and imprisonment on the part of any officer, agent, director, or employee of any railroad company in that State, under sections 41 and 43 of act 300 of the Public Acts of the State of Michigan, 1909 (Original Brief, foot-note, p. 17).

Counsel has cited Michigan cases in support of his contention; he has not recited the facts underlying the general wording in the portions of the opinions quoted. The case of *Michigan Central Railroad vs. Smithson*, 45 Mich., 212, 221, an excerpt from which is given in counsel's brief on page 8, was an action by an employee for personal injuries alleged to have been caused by unsafe coupling devices used by the defendant company. The origin and destination of the car, in coupling which the plaintiff had been injured, appears nowhere in the report of this case, save that that car belonged to the New York, Lake Erie & Western Railway; nor was there any mention in that report of intracity switching or transportation.

Upon page 10 of his brief counsel cites, in support of the validity of section 7 (*c*) of act 300 of 1909, the case of *Michigan Railroad Commission vs. Michigan Central Railroad*, 168 Mich., 230. By referring to this same section 7 (*c*), originally (together with subsections (*a*) and (*b*)) enacted in said act 300 and subsequently re-enacted in act 139 of the acts of 1911 and in acts 370 and 389 of the acts of 1913 (Original Brief, pp. 13-15), it will be seen that this section provides that railroads shall "draw over the same the merchandise and cars of any other corporation or individual having connecting tracks." As subsection (*a*) of the same section provides for connections for through traffic as between railroads, and subsection (*b*) for switch connections for such through traffic, it is difficult to see the application of this subsection (*c*), which deals only with the hauling of industrial or private cars; especially as this section does not touch intracity switching, and industrial switching is not here in issue. Subsection (*d*), and that subsection only, undertakes to provide for intracity switching; and that had not yet been enacted at the date of the order involved in that case. The sole transportation problem there under consideration was an order, made by the Michigan Railroad Commission, for the benefit of certain villages within a radius of eighteen miles from the village of Oxford, Michigan. That order did not require intra-village switching or transportation, either as a complete movement or the beginning or end of another haul, within that village. The ground of complaint had been that the only railroad facilities reaching neighboring villages were those afforded by the Detroit United Railway Co. The order of the Commission required the Michigan Central to make physical connection with the tracks of that company in the village of Oxford for the purpose only of through movements between points on the line of the Michigan Central and the villages surrounding Oxford.

It is, therefore, apparent that in the 30 years of legislation

so frequently referred to by counsel and insisted upon by the court below, the State of Michigan had not attempted to make any provision for intra-city switching or transportation until the enactment of subsection (*d*) of section 7 of act 139 of the Public Acts of Michigan for the year 1911, and counsel has failed to cite any case in the State of Michigan upholding any such contention. Indeed, if the learned Supreme Court of Michigan had so held it would be a stretching of the canons of statutory interpretation that could not be justified by the most extreme limits of so-called "judicial legislation."

The right of a shipper to route his freight is always subject to the rights of the carriers to use their lines for their proper purposes, and to the limitations expressed in the act of regulation, as well as in the Federal Constitution. Such an unrestricted right is not and cannot be left to a shipper. He cannot be permitted to turn through lines into either terminal or belt lines, nor to demand the use of railroad property in a manner contrary to that required by the calling of the carrier whose services he seeks. Again, he could not be allowed to employ the terminals of one line and the main line of a competing carrier, even if there were a State statute to that effect, while the interstate shipper, forbidden that unjust privilege, would be compelled to wait for the use of those terminals on the completion, or at the beginning, of his shipment over appellants' main lines. But the provision of section 7 (*a*) is broad:

> "*Nothing* in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to any other railroad engaged in like business."

That the statute authorizes compensation to be paid does not alter the meaning of this provision. It would not in any event, nor could it be construed to mean a free giving. Its true meaning is what the words imply as sensibly construed. As shown by the decisions of this court, in construing the

nature of the services attempted to be required by the Kentucky court in the Louisville case (*L. & N. R. R. Co. vs. Stockyards*, 212 U. S., 132), and by the decisions of the Interstate Commerce Commission construing section 3 of the Act to Regulate Commerce, the meaning of these words can be only that the carrier shall not be required to permit the *use* of its tracks or terminal facilities to another carrier; that it shall not be required to perform terminal services for such other carrier, using its own lines for that purpose.

Counsel, in his argument, constantly assumes that the service of transportation within and without a city is one and the same thing. We contend there must be a reasonable limit which will distinguish between services which are mere switching and those which are actual transportation, and also between services that properly belong to a street railroad or belt line or terminal system and those which belong to a through interstate or intercity carrier. But if it be necessary to answer the supposed case of traffic offered for terminal service immediately without the corporate limits, and an attempt to take the terminals of appellants for this purpose, it is sufficient to point out that in *Louisville & Nashville R. R. Co. vs. Stockyards, supra*, where the petitioner was denied the alleged right to route even between the Central Stockyards and Bourbon Stockyards, in purely local transportation, the first-named yards were just outside the city of Louisville and nine miles from the terminal of the Southern Railway in that city (97 S. W. Rep., at page 787).

Again, an additional burden, over and above the use of their property, would be imposed upon appellants by the interpretation of these acts contended for by counsel. Section 7 (*e*) of act 389 of Public Acts of Michigan provides:

> "That any common carrier, railroad, or transportation company receiving property for transportation from a point in the State of Michigan to another point within the State of Michigan, shall issue a receipt or bill of lading therefor, and shall be liable to

> the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which said property may be delivered or over whose line or lines such property may pass, * * *" (Original Brief, foot-note, page 15).

By this subsection, if these appellants shall have been compelled to perform terminal or belt switching service within the limits of the same city or town, they are required to take upon themselves the liability of a through carrier in every instance in which they shall, in obedience to this same statute, perform any switching movement which initiates a through movement over the lines of another carrier outside such city or town.

But the wording of section 7 of these Michigan Statutes, enumerated above, is plain. Moreover, as it is, particularly in the matter of through routing, in derogation of the common law (*Atchison, Topeka & Santa Fe Railroad Company vs. Denver & New Orleans Railroad*, 110 U. S., 667, 682), it must be strictly construed, at least so far as not to import into its terms matters not comprehended therein, and especially those that, by the very language of the act, are excluded therefrom. More than that, as the proviso excludes the use of these tracks or terminals from all other carriers for all the services and functions here in question, the exception to the proviso will not be taken as adding to the burdens of these carriers anything beyond what it expressly exempts from the operation of that proviso.

If these statutes are interpreted to support the order of April 10, then they are unconstitutional, and the order void. If they do not authorize that order, the latter is equally null and unenforcible.

We have discussed these acts at length under point II of the argument contained in our original brief, at page 53. It is sufficient to point out, in answer to counsel's contentions as to the wording and effect of subsection (*d*), that the latter is the only portion of the whole statute that deals with the

handling of carload traffic between junctions or transfer points, or intersections of one railroad with another in any city or town, and team tracks or other sidings in the same city or town, and that the words "locally consigned" in that subsection (*d*) are defined by the words immediately following: "Between points in the same city or town," which words are repeated throughout the course of that paragraph. These words "locally consigned" must be considered as having been put there for some purpose other than a mere desire to accumulate phrases. They must also be taken in their ordinary signification, which is not that of consignment of traffic coming in or going out in a through haul between cities. We cannot presume that the Michigan legislature, having considered the substance of this very section 7, in some four separate acts (Opening Brief, foot-note, pp. 13-18), and having enacted and re-enacted the proviso in subsection (*a*) four times, and subsection (*d*) in the last three statutes, employed language to express any meaning other than is conveyed by the ordinary usage of the plain terms thereof. This is not permitted by the rules of statutory construction nor by the courtesy due from a judicial tribunal to a legislature.

II.

ANSWER TO POINT II—STATUTES AUTHORIZING INTERCHANGE FOR THROUGH TRAFFIC, AND DIFFERENCE BETWEEN INTERCHANGE OF THROUGH TRAFFIC AND INTERCHANGE OF TERMINALS.

Counsel maintains under point II that the order of April 10, 1912, "requires a transportation service—an interchange of traffic." "In no respect distinguishable in principle from track connection and interchange of traffic, and the statutes authorizing interchange of traffic and track connections have been sustained as not in violation of the Constitution."

We have shown that the Michigan cases do not deal with the propositions here involved and that the statutes of that State did not until the year 1911 attempt to require these intracity services. In this point counsel relies not only upon those very cases, as well as upon the opinion of the lower court, which, in its turn, had relied upon the same citations, but also upon certain decisions of this court, which did not in any instance involve the point at issue.

In *Wisconsin, etc., Ry. vs. Jacobson*, 179 U. S., 287, it is true that, as counsel says, "a track connection had been ordered by the Railroad Commission of Minnesota, under a statute that provided that track connections and interchange of traffic could be compelled under reasonable terms and reasonable conditions;" but that connection dealt only with through traffic, and did not attempt to deal either with the switching or local, so called, transportation within a city, involved in this proceeding.

The switch connection provided in that order established through routes over the lines of the Wisconsin, Minnesota & Pacific R. R., and the Wilmar & Sioux Falls Ry. Co., at Hanley Falls, Minnesota, so as to enable points west of Hanley Falls to reach Sioux City and other points for the transportation of cattle, and citizens of those towns west of Hanley Falls to obtain wood from points along the line of the Great Northern system, of which the Wilmar & Sioux Falls Ry. forms a part. Not only was there an immense supply of wood along the Great Northern system, but the wood on the line of the Wilmar & Sioux Falls Ry. was scarce and becoming more so every day, in addition to being more expensive than that obtainable from points on the line of the Great Northern. These actual transportation necessities were grounds discussed in detail by the court and made the basis of allowing this connection even for through transportation only. So Mr. Justice Peckham, speaking for the court, said (p. 301):

> *"Taking the facts which we have already enumerated into consideration*, we think there is no justifi-

> cation furnished for the argument that the judgment, if enforced, would violate any of the constitutional rights of the plaintiff in error. *In so deciding we do not at all mean to hold that under no circumstances could a judgment enforcing track connections between two railroad corporations be a violation of the constitutional rights of one or the other, or possibly of both such corporations.* It would depend upon the facts surrounding the cases in regard to which the judgment was given. The reasonableness of the judgment with reference to the facts concerning each case must be a material, if not a controlling, factor upon the question of its validity. A statute, or a regulation provided for therein, is frequently valid, or the reverse, according as the facts may be, whether it is a reasonable or unreasonable exercise of legislative power over the subject-matter involved. And in many cases questions of degree are the controlling ones by which to determine the validity, or the reverse, of legislative action."

So in the causes now presented, the acts of the State of Michigan during all the time, from the earliest enactment up to the time of the enactment of subsection *d*, act 139, of the Public Acts of 1911, requiring interchange between carriers for the purpose of reaching various cities and towns in creating through highways of commerce by which those cities and towns might have free interchange of traffic with each other, were valid and proper enactments. Up to that time they required merely the exercise of the proper calling of the carriers in that State as channels between its various municipalities. They did not attempt to turn a through artery of commerce into a local intracity dray by steam, nor to pervert its tracks and terminal facilities to the function of a belt line or terminal company, just as they did not require carriers of passengers between cities to stop at every city block or to reach the individual homes of these passengers, but left that function to the local street railroad. They did not require a carrier to transport or switch from spot to spot

within a city traffic which had already reached its destination by delivery at the terminal of the through carrier reaching such a city.

Counsel cites the case of *Minneapolis & St. Louis Ry. Co. vs. Minnesota*, 186 U. S., 257-263 (Brief, p. 15), as further supporting this new doctrine of local interchange. That case, following the line of *Wisconsin, etc., Ry. vs. Jacobson*, *supra*, merely held that for through transportation movements between different cities, similar to those treated in the latter case, joint rates might be established by the local commission as between municipalities within that State.

We need hardly point out that a requirement to make connections "to permit the transfer of loaded cars" is not this case. That is obvious because the acts of 1911 and 1913 go beyond the original statutory requirements in this regard. Track connections to permit the *passage* of cars are far different from the using of terminals to load and unload cars. The cases cited by counsel as under this head, both from the courts of Michigan and this court, relate, as we have shown, to the former requirement, and not to the latter.

It is significant also, to note that subsection (*a*) in section 7 of the act of 1909 provides only for "the *interchange of traffic* between their respective lines, and for the receiving, forwarding, and delivering of the passengers and property to and from their several lines and those connecting therewith" (without which delivery, at the end of the line haul immediately succeeding such interchange, the latter would have been useless), "and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to *any point* on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines * * * Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

Counsel confuses interchange of traffic with interchange

of terminals. The order of the Commission here complained of, and the later acts of Michigan, so far as they authorize that order, are far different from track connections and interchange of traffic, as authorized by the acts of Michigan previous to 1911, and by other statutes approved by this court, since (*a*) track connections and interchange of traffic relate to transportation, not to the use of terminal facilities; they involve a mere passing over, but not remaining upon the tracks of a company; and (*b*) in ordinary signification and practical use these words mean an interchange of moving traffic between termini, not the use of terminal tracks employed for depot purposes.

That subsection (*a*) is confined to interchange of traffic between any *point* on its [the carrier's] own line or on any connecting line is conclusive against the contention that it includes intracity switching. The word "point," standing alone, does not, in any ordinary sense, comprehend the individual team or industrial track to which a car may be ordered. That word refers and must be taken to refer, unless there be something to contradict it in another section, only to cities, towns, or villages on the line of a carrier. So in the Jacobson case, cited and stated *supra*, Mr. Justice Peckham, in discussing the question of establishing joint rates between the various towns and cities therein involved, used the words "transportation of freight between *points* on the respective lines of these roads within the State." This meaning of the word is further established by the fact that the legislature saw fit, as we have established under proposition I of this reply, to enact, in the same section, an additional section specifically dealing with local or intracity switching and transportation, and followed the general word "point" by the words "in the same city or town."

Counsel assumes (Brief, page 16) that the legislature of Michigan has not recognized the belt or terminal railroad as distinct from a railroad hauling the length and breadth of a State and performing interstate and intercity service, and passes by the effect of subsection (*d*) of section 7 of act 300 of 1909.

Subsection (*b*) of section 7 of that act uses the very words, *"belt-line railroads and terminal railroads,"* and thereby establishes a legislative recognition of these two separate classes of transportation agencies, through carriers between cities and terminal lines within the corporate or switching limits.

If the legislature of Michigan had never mentioned the words "belt line" or "terminal railroads" the result would be the same. The fact that there is a general incorporation act for railroads under which any railroad for any railroad function whatsoever may be created, could not be under any circumstances construed as requiring a railroad engaged in one kind of business to perform the duties of a railroad engaged in another kind of business. Nor was any distinction between classes of carriers made in the acts for incorporation of railroads existing in Missouri and in Kentucky in force at the time of the decisions in *State vs. Terminal Association*, 182 Mo., 284, and *Louisville and Nashville R. R. Co. vs. Central Stockyards*, 212 U. S., 132, both cited in our opening brief and in counsel's argument. One railroad might be incorporated to haul passengers and not hold itself out to haul freight; another might be incorporated to carry freight and not hold itself out to carry passengers. The Detroit & Toledo Shore Line carries, and holds itself out to carry, only freight between Toledo, Ohio, and Detroit, as may be seen from the Official Railway Guide, October, 1913, page 51. A common carrier has always been limited to those functions and services for the general performance of which it has held itself forth to the public. No decisions hold that there may be superadded upon it a function or duty not pertaining to the calling to which it has by its own conduct and manner of business devoted itself.

Any statute which assumed the position of counsel could not be sustained, inasmuch as it would put, as a condition upon an interstate carrier performing any business within the State, the burden of constructing and operating, in connection with its other lines, a belt or terminal system, which would constitute a burden upon such commerce. As shown

under point XI of the argument in our original brief, no such condition can be imposed upon such a carrier.

Moreover, this court has itself made the distinction between local transportation and through transportation between cities in the case of the *Louisville & Nashville R. R. Co. vs. Central Stockyards,* 212 U. S., 132, discussed at length in our original brief (pages 63 to 71 and 74 to 78).

Under point II, our original brief, beginning at page 53, we have shown that subsection (*d*) under which alone any of the services required by the order of April 10 could be ordered, was confined to traffic, the origin and destination of which were both within the same city, and to receiving and transporting traffic from a junction point to team tracks, but not in the reverse direction. We here point out that that statute specifically limits transportation between junction points and team tracks, not merely to a movement only in the one direction, *from* junction *to* team tracks, but confines the obligation to "such carload freight," namely, the carload freight enumerated in the preceding clause, which was limited to that locally consigned. It is futile for counsel to attempt to generalize the words "locally consigned" into any other meaning than that of within the same city or town. First of all, the sub-section in question clearly limits the words to that significance by the words immediately following "locally consigned", namely, "between points in the same city or town." Again, if this were not the limitation upon the meaning, it would render this section nothing but a tautological repetition of sub-section (*a*) or else an enactment unenforcible by reason of its utter uncertainty. This sub-section even were it constitutional, could operate only upon (1) freight locally consigned upon the lines of a single carrier within the limits of a city or town, or (2) freight locally consigned within city limits moving only from a junction point to a team track, side track, hold track or other terminal facility of the delivering carrier. These two movements and these two alone are covered by this subsection; but, as we pointed out in our original argument,

point II, beginning at page 53, and point XII, beginning at page 102, the proviso in sub-section (*a*) and the terms of sub-section (*d*) were in conflict until the passage of acts 370 and 389, Public Acts of Michigan of 1913 (Original Brief, foot-note, pp. 14-15).

That the legislature of Michigan desired the proviso in sub-section (*a*) to stand under all circumstances, and regardless of the subsequent enactment of subsection (*d*) of the act of 1911, was shown by its re-enactment in the two acts of 1913 referred to. That that proviso withdrew the terminals of these companies from those various services until that year was shown by the exception superadded to that proviso; and that this was the only exception to be grafted thereon must be taken from the fact that this enactment was made after the litigation now before this court had been instituted, and the decision of the lower court rendered, wherein all the services here involved were pressed, argued in detail and considered. It cannot be presumed that the legislature of the State of Michigan in three times re-enacting that proviso and in twice adding the same exception thereto did not consider the subject fully and weave into that act the complete expression of its legislative will.

It also is particularly significant that the legislature chose to limit such interchange instead of leaving the requirement general by expressly providing in the very words of the act to regulate commerce passed by the Federal Congress: "Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business." Not only was this proviso necessary to save the act, if it could have been interpreted to mean local switching between through lines, since this court has definitely held that to require such a use so excepted by the express terms of this act would be a taking of property without due process of law, contrary to the Fourteenth Amendment of the Federal Constitution (*Louisville & Nashville R. R. Co. vs. Stock Yards,* 212 U. S., 132 145); but the Interstate Commerce Commission has recog-

nized the full force of this prohibition in the cases of *Arkansas vs. St. L., I. M. & S. Ry. Co.*, 24 I. C.C. R., 292, 295 (cited in preliminary statement, *supra*), and *Morris Iron Co. et. al. vs. B. & O. Railroad Co. et al.*, 26 I. C. C. R., 240 (cited in our original brief, page 43).

In the last-named case the facts were as follows: The Frederick Railroad Co. extended for some 40 miles through the county of Frederick to the city of Frederick, and had connections with the Western Maryland Railroad, with which it appeared to have through traffic arrangements both as to freight and passengers. The city of Frederick was also served by the Baltimore and Ohio and the Northern Central, the latter a part of the Pennsylvania system. The Pennsylvania had a possible switch connection with the Frederick railroad by means of a side track common to both lines, but declined to interchange any cars with that line. Complainants operated industries in that city, located upon the tracks of the Frederick railroad. They prayed, among other things, that the Frederick and Pennsylvania lines be required *to enter into mutual switching arrangements with some reasonable charge for the service.* The Commission held (pp. 243-244):

> "The third section of the act to regulate commerce provides that no railroad shall be required to give the use of its tracks or terminal facilities to another carrier engaged in like business. The defendants insist that under this provision of the statute we have no authority to require them to make delivery on their terminals of traffic which has reached the city of Frederick over the line of the Western Maryland and the Frederick Railroad, since they are engaged in like business with the Pennsylvania and the Baltimore and Ohio.
>
> "The Commission has felt constrained in applying the act to regulate commerce to observe the apparent inflexible requirement of this provision. To order these defendants to receive and switch cars which have been transported to Frederick over the lines of their rivals would apparently be to require them

> within the meaning of the act to open their terminals to their competitors, and this is forbidden. We are therefore obliged to hold in the present case that we have no authority to grant this reasonable request of the complainants."

It is true, as counsel for the appellees point out, and this excerpt clearly shows, that that decision of the Commission was made with regret. The regret was based on the fact that certain shippers would be compelled to dray their goods "nearly one mile across the city of Frederick" (page 241). In the Louisville & Nashville R. R. case, *supra*, the interval between terminals was 8 miles. As against this hauling, by dray or motor-truck between points within any town or city, is the congestion and use of terminals of one through carrier by another, and the loss of cars to traffic and to the carrier required to yield them to another for such local delivery. In these days, when the Interstate Commerce Commission has just issued a fresh warning as to car shortage, the interstate shipper would be required to wait for cars to serve his through traffic while they were switched locally back and forth, locally consigned and reconsigned, and unloaded at the leisure and whim of the intrastate shipper, indulging the alleged right to locally route his freight within the confines of any city or town.

III.

ANSWER TO PROPOSITION III—PROVISO AGAINST REQUIRING USE OF TERMINALS BY OTHER CARRIERS IN MICHIGAN STATUTES AND HEPBURN ACT CONSIDERED TOGETHER.

Under this proposition counsel discusses the effect of the proviso of subsection (*a*) of section 7, referred to and quoted, *supra*, in connection with the Hepburn amendment, which latter provided in section 1 for the establishment of through

routes, in section 3 for the interchange of traffic, and in section 15 for the making of through rates. Sufficient answer to the argument is presented in our answer to point II, *supra*, wherein we have shown that not only has the Interstate Commerce Commission passed upon this specific clause and held it to forbid the allowance of the switching movements here prayed for (*Arkansas R. R. Comm. vs. St. L., I. M. & S. R. Co.*, 24 I. C. C. R., 292, 295; *Morris Iron Co. vs. Baltimore & Ohio R. R. Co.*, 26 I. C. C. R., 240), but under *Louisville & Nashville Co. vs. Stock Yards*, 212 U. S., 132, *supra*, a State constitution requiring these very services has been held in violation of the Fourteenth Amendment to the Federal Constitution, both as to the use of terminals and the delivery of cars for such services.

The passing through the terminals in the course of a through movement may be incidental to the line haul, but the use of the terminals or the delivery of a car in purely terminal service is not incidental thereto, and the decisions cited above so hold.

The case of the *K. & I. Bridge Company vs. Louisville & Nashville R. R. Co.*, 37 Fed., 567, cited by counsel on page 19 of his brief, goes on the express ground of lack of proper facilities at the point of the proposed interchange (page 625); and also upon the further ground that where the carrier had, as in that case, itself provided a proper through route, no additional route could be required of it, which was the law up to the amendment of the act to regulate commerce, made after the decision of this court upon that precise point, in *Interstate Commerce Commission vs. Northern Pacific Railway Company*, 216 U. S., 538. That amendment has not yet been tested, nor has the doctrine of the K. & I. Bridge Company case limiting through routes, been judicially overruled.

IV.

ANSWER TO PROPOSITION IV—AUTHORITIES DISTINGUISHED. NONE OF THEM DEAL WITH QUESTIONS HERE INVOLVED, EXCEPT TO AFFIRM APPELLANTS' CONTENTIONS.

The matter contained under proposition IV of appellants' brief has already been discussed above or will be treated in connection with other points later, save as to the citation of authorities therein contained. These cases either did not deal with the transportation requirements here in issue, or where they did discuss those questions affirmed the position of appellants. Counsel quotes a portion of a certain paragraph contained in the case of *Cardiff Coal Co. vs. C., M. & St. P. R. R. Co.*, 13 I. C. C. R., 460, in which he alleges, "a through route was enforced in spite of the clause in section 3 of the Interstate Commerce Act."

The use of terminals for intracity switching or transportation was not involved in any sense of the word in that case, and such a use was expressly distinguished in the very paragraph from which counsel quotes. The words he quoted occur at the latter end of that paragraph. We give the portion immediately preceding that quotation (p. 468):

> "One further point is made on behalf of the defendant that must not be overlooked. It is said that an order requiring the St. Paul to join with the Chicago, Indiana & Southern Railroad in establishing through routes and joint rates to the points in question would be in violation of that part of section 3 of the act which provides that no carrier shall be required to give the use of its tracks and terminal facilities to another carrier engaged in like business. *Without some such provision in the law or some such general understanding of the essential injustice involved, adventurous capital would not be slow in parelleling the great trunk-lines and in demanding a connection that would give them the use of the trunk-line terminals.* But the clause in question has no

application to such a state of facts as this record presents. *Neither the Chicago, Indiana & Southern nor the Wabash is a competing line with the St. Paul in the territory in question; they are simply connecting lines.* And one of them is a necessary link in the through routes demanded by the complainant to the territory in question. *But from no point of view can it be said that this proceeding is an effort on the part of either of those lines to acquire the use of the terminal facilities of the St. Paul.* It is simply an effort on the part of the complainant to reach those *interstate points with its coal.*"

Counsel further cites the case of *St. Louis, Springfield & Peoria Railroad et al. vs. Peoria & Pekin Union Railway Co.*, 26 I. C. C. R., 226, and quotes that case in pages 20 to 25 of his brief. That decision involved only a terminal carrier as such, holding itself out to give belt-line or terminal services to other carriers entering the city, and, therefore, as to such through carriers, becoming a common carrier within the city limits. Mr. Commissioner Prouty concurred in that decision for the reason that the Peoria & Pekin R. Co. was a belt line, and therefore had no terminals "entitled to protection."

The present case is neither that of a terminal company, nor does it involve discrimination. The services are withdrawn from all shippers alike, and the station facilities of appellants are divided with but one other line among the seven trunk lines besides those of appellants entering Detroit, which pays fair rental and not mere switching rates.

As was said in the case of *Morris Iron Co. vs. The Baltimore & Ohio Railroad Co.*, 26 I. C. C. R., 240, *supra* (page 244):

> "Neither is this situation that of a terminal railroad which has been constructed mainly for the purpose of connecting main-line roads with one another and giving access by such lines to the industries of a community. This again presents another question which is not passed upon.
>
> "Nor is there any question of discrimination between railroads or shippers."

V.

ANSWER TO PROPOSITION V—*Louisville & N. R. vs. Central Stock Yards*, 212 U. S., 132, AND THE PRESENT CASE ARE PRECISELY ANALOGOUS BOTH ON THEIR FACTS AND IN PRINCIPLE.

Louisville & N. R. Co. vs. Central Stock Yards, supra, has been stated and analyzed in detail under Point IV of our original brief, beginning at page 63. As there shown, the very services sought here were refused by this court in that case. And that refusal, as to the purely local service, was predicated solely on the 14th amendment. We have there shown that no distinction exists on the alleged ground of lack of provision in the Kentucky constitution for compensation. (Original brief, p. 68.) There was nothing in the constitution nor in the laws of that State that limited the carriers in their charges.

The record, as disclosed by the opinion of the Court of Appeals of Kentucky, shows that at each of the two stock yards, the Bourbon and the Central stock yards, there were ample facilities for loading and unloading, and both yards were in all ways equally fitted for the service demanded. There was no question of superior or particular appliances at either point. It was merely a question of stations or terminals, local delivery points, one off and one on the line of the through carrier; and the right of one carrier to use such terminals belonging to another, on the insistence and alleged need of a shipper, for just such services as are here sought to be required.

As to the further attempted distinction made by counsel on pages 29 to 37 of his brief, that the freight involved was cattle, it need only be pointed out that that makes the present case only the stronger. The lower court had laid emphasis on the fact that if the cars were not switched as prayed by petitioners the cattle would have to be taken to

one yard, unloaded, and driven through the streets of the city to the other, eight miles distant, thereby losing in weight and value.

Yet this court held (p. 145):

> "If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage."

In support of his attempt to distinguish *Louisville & Nashville R. Co. vs. Stockyards, supra*, from this case, counsel cites, at page 36 of his brief, the case of *C., I. & L. R. R. vs. Indiana R. Comm.*, 95 N. E. Rep., 364. In the first place, that case referred only to industrial switchings, treated in our Preliminary Statement to this reply brief, although that case sought to differentiate the Louisville & Nashville case by much the same reasoning as did the court below. We have fully discussed that decision, both in the original brief and in this reply, but there is this difference between the statutes of Indiana there in question and the statutes of Michigan here under consideration: The Indiana statutes provide some definite form of remedy in favor of one carrier against another for undue detention of cars (Acts of Indiana, 1907, chap. 241m, p. 463). They also provide for definite relief from performing the service here sought, where the facilities of the carrier are not more than sufficient for its own through transportation (*Ibid.*, subsection *l*, p. 462). They further provide that where terminal service is desired between competing carriers, it need not be rendered where the carrier by whom it is sought reaches the same point by an equally convenient route and offers cars to shippers for the transportation of their freight, from that point to the city of destination, all at no higher rate than would be paid over the other line (*Ibid.*, subsection *m*, p. 463).

None of these provisions occur in the Michigan statutes. Their absence cannot be filled by inference of counsel as to

possible allowances by the courts or the Commission. As was said by this court in the Louisville case, 212 U. S., at page 144:

> "The want cannot be cured by inserting them (these provisions) in judgments under it. The law itself must save the parties' rights and not leave them to the discretion of the courts as such."

VI.

ANSWER TO PROPOSITION VI—THROUGH CARRIER MAY SELECT SUCH OTHER THROUGH LINES AS IT MAY CHOOSE TO SHARE ITS TERMINALS, EXCEPT WHERE ACTUAL MONOPOLY RESULTS. MONOPOLY IS NEITHER SHOWN NOR COULD IT EXIST UNDER FACTS OF THIS CASE.

Counsel states on page 38 that:

> "If a carrier cannot refuse to interchange with other carriers at its terminals, it cannot prescribe the terms upon which it will permit such interchange, nor can it permit it with one and refuse it to the other."

Inasmuch as it has been shown that carriers can refuse to interchange with other carriers at their terminals, it follows, as held in the *United States of America vs. Terminal Railroad Association of St. Louis et al.*, 224 U. S., 383, 405, that:

> "It cannot be controverted that, in ordinary circumstances, a number of independent companies might combine for the purpose of controlling or acquiring terminals for their common but exclusive use. In such cases other companies might be admitted upon terms or excluded altogether. If such terms were too onerous, there would ordinarily remain the right and power to construct their own terminals. But the situation at St. Louis is most extraordinary, and we base our conclusion in this case, in a large measure, upon that fact."

The statutes of many States, among them Michigan, provide for union station and depot companies, whereby two or more railroad companies can unite to procure terminal facilities within the same city. These terminal stations are not for the purpose of belt line service, but as common terminals for the two or more lines making their investment and constructing their tracks, freight sheds, round houses, depots, and other terminal facilities. The cost of maintaining these facilities is, as a rule, divided on the wheelage or other rental basis, in proportion to the needs of the carriers so using them, which may either hold them as lessees of the depot company or as stockholders therein or as joint owners of the terminals. The Shore Line pays appellants' rental, based in the first place, on a proportion of rental expenses, and in the second, on a wheelage basis of 5 per cent of the terminal valuation at West Detroit (Exhibit A, Abst. 18, 19; Rec., 24, 26, 129, 131). Can it be said that no two or more carriers can enter into any such joint arrangement and purchase their terminals jointly, investing their capital and procuring such lands as may seem fitted to their own needs, making a careful selection of sites with reference to their future business, save at the peril of being required to admit any and every carrier that may knock at the doors of the station; and that on a mere payment, as this court said in the Louisville & Nashville case, "for the service of switching"?

Of the nine trunk lines entering Detroit, it would be idle to say that these three control the situation. When a case of monopoly of terminals by conspiracy or unlawful agreement of carriers is presented, as dreaded by counsel, this court will deal with it as it already has dealt with a case of actual monopoly in *Railroad Terminal Association of St. Louis vs. United States, supra.* As to the prohibitive feature, by reason of alleged expense, counsel's argument would show that because appellants have acquired and constructed terminals for their own lines (which terminals now represent

a value of more than $1,000,000, Abst., 5, Rec., 4, 109), and although no topographical or geographical features prevent the entry of other railroads into the city, yet no future lines need construct terminals of their own therein, but may build their tracks to a point just within the city, within the reach of appellants' lines, and demand its terminals. This is the crux of appellees' demands. The first road into the city judicious in selecting a location, generous in expending its money, in acquiring land and constructing terminals, shall be made to pay the penalty by becoming a terminal carrier for any other line that cares to enter into the field of competition without the expense of building team tracks, side tracks, and other terminals.

One significant feature of counsel's defense is to be finally noted under this point. He objects, on page 38, that a shipper must route his freight over the road having the convenient terminals, instead of over any line preferred by the shipper for the through haul—in other words, a competing line.

The shipper, counsel maintains, is prejudiced by being compelled to route his freight over the line of the carrier owning the terminals instead of giving it through favor or caprice to any other competing line for carriage from the same point of origin up to a junction point at the same destination, where the other carrier might be forced to perform the belt line and terminal service. Thus the line enjoying the long revenue haul, can constantly keep the terminals of its competitor congested. If this be not taking property without due process of law, the Louisville & Nashville case can have no meaning.

VII.

Answer to Proposition VII—Value of Terminals.

Counsel maintains that the "extent and value" of appellants' terminals in that city are of no importance except as they relate to the compensation to be paid or to be exacted for the service which is so performed.

The value and extent of the terminals here in question are important, and the difficulty and cost of additional terminal facilities, in spite of the rulings of the lower court to the contrary, are likewise important, since, as alleged in the bills, supported by the demurrers and shown conclusively in the *Detroit Reconsigning case*, 25 I. C. C. R., 392, cited *supra*, the terminals of these companies are frequently congested, and are no more than sufficient to accommodate the through traffic carried over their own rails.

Moreover, the rates to be charged are in nearly every instance under the orders of both the Interstate Commerce Commission and intra-state tribunals, based on a flat charge for the whole district within a given city or town. We have shown that as these services could not be required of these carriers, so they had the right to cancel all tariffs providing therefor; but we desire to point out that the contention that the switching charge may vary with the individual carrier for whom interchange is to be performed, and be based on the physical value of the terminals of each carrier concerned, and the actual service rendered in each individual instance, is not only impracticable but has in no case been permitted. Only in a few instances have the commissions permitted the rates to vary even according to districts, or to increase or decrease according to the various distances. But no case can be cited in which the switching charge was allowed to depend upon any other factor than the switching service actually rendered, the distance involved, and the tonnage (even where the latter two have been allowed to be of any weight).

VIII.

Answer to Proposition VIII is Contained in the Analysis of *C. I. & L. Ry. Co. vs. Indiana Commission*, 95 N. E. Rep., 364, under Point V, *supra*.

IX.

Answer to Proposition IX—Obligation of Through Lines to Perform Local Switching as Belt or Terminal Companies.

We have already discussed the contentions contained under this head in Points I and II, *supra*.

Before passing the point, however, we must call attention to the cases cited therein in support of counsel's contention. *Bridwell vs. Gate City Terminal Co.*, 56 S. E., 624 (Georgia), involved only the question as to whether a terminal railroad could condemn under the general railroad statute. It was, of course, held that this was proper. It is to be noted that that case in its very terms recognized terminal and belt lines as such, and that there was in that case no question involved as to whether a terminal railroad could be required to haul between cities or a carrier between cities could be required to perform the duties of a terminal railroad.

We have already discussed *State ex inf. vs. Terminal R. Ass'n*, 182 Mo., 284, as well as *United States vs. Terminal R. R. Ass'n of St. Louis*, 224 U. S., 383. As the latter case resulted in a dissolution of terminal companies, it is difficult to see how it can support counsel's plea for unification.

X.

Answer to Proposition X—Effect of Suspension Statute.

The sole question here presented is whether or not these appellants can be required to perform the service and give their terminals to the uses required by the order of April 10, 1912. Should this court so hold, the stay order would be dissolved. Appellants would then be required to perform the services under the terms of the earlier and lower tariff until a hearing should be had and the judgment of the Commission be obtained. Meanwhile, the revenues which should have accrued under the rates fixed by the later tariff held under suspension, if found reasonable by the Commission, or any rate between the older tariff and the later tariff, if fixed by that body at a point between those two charges, would be irretrievably lost to this company; while, should it fail to hold the later tariff in suspension, it would not only be liable in the sum of all the penalties of fine and imprisonment fixed for every separate charge for each individual carload under sections 41 and 43 of the act, quoted in the foot-note on pages 17 and 18 of our original brief, but would be required to refund to each shipper every penny of the difference between that rate and the one subsequently fixed by the Commission, not merely by virtue of the terms of the bond in this case, but under the express provisions of the laws of Michigan.

In the later tariff here held under suspension (Exhibit E, Abstract, 24; Record, 72, 166) an advance in rates was made from $5 to $8 for switching between hold or team tracks on the lines of these appellants, and other hold or team tracks on such lines. Should it be here held that switching between team tracks and other team tracks on the lines of appellants must be performed, that service will have to be rendered at the $5 rate fixed by tariff 502-A, I. C. C. 1428-A

(Exhibit C to bill of Grand Trunk, Exhibit B to bill of the Detroit Company, Abstract, 21, Record, 43, 137, and pages following), instead of the $8 charge fixed by Exhibit A under suspension. The results have just been pointed out.

Counsel for appellees have not attempted to justify the statute requiring this suspension without reparation by citing any decisions, so plain is the violation of the Fourteenth Amendment.

This court has said in the case of *Southern Railway Company vs. St. Louis Hay Company*, 214 U. S., 297, at page 301, that the railroad is entitled to compensation in addition to the mere cost of the services which it performs. This ruling was further approved in the case of *Interstate Commerce Commission vs. Stickney*, 215 U. S., 98, at page 105.

The result of these decisions is that the carrier has a right to a fair profit for services by it performed. This right is a right guaranteed to it by the Constitution. It is a right upheld in the case of *Louisville & Nashville R. R. vs. Central Stock Yards Company, supra*, 212 U. S., 132, at page 145.

There is a clear difference between notice and suspension, just as there is between notice of application for injunction and the suspension by that remedy of all change of the *status quo* pending hearing. But under this statute the carriers alone give notice, and also are restrained thereafter and until final hearing without indemnity. The issuance of injunctions until the determination of a suit, where the loss of money or property in the interim is involved, requires, as a matter of equity, a bond for security. Thus, Justice Van Devanter, then circuit judge of the Eighth Circuit, fixed the bond of the railroads at $200,000, "for the protection of shippers and passengers," in enjoining the enforcement of rates fixed by the Railroad Commissioners of Arkansas under State statutes. *In re Arkansas R. Rates*, 163 Fed. Rep., 141, 144. So in the present case the bond was fixed at $100,000 (Abst., 65; Rec., 220). The suspension of these tariffs pending determination of their propriety demands equally some guarantee

of reimbursement in case of loss during the interim, should the advances be held justifiable. This would be so even did not the statute provide for reparation to the shipper. But the inequality before the law is only the more marked by this protection allowed the shipper only, and in the same statute expressly denied to the carrier.

That advances are frequently held proper need hardly be pointed out to this court. Advances were allowed either to the points published in the suspended tariffs or to a point intermediate between the rates named therein and those in the former tariffs in the following cases, among others:

In re Advances in Rates for the Transportation of Fluid Milk, 23 I. C. C. R., 500; *Morgan Grain Company vs. A. C. L. R. R. Co.*, 19 I. C. C. R., 460; *Banner Milling Company vs. N. Y. C. & H. R. R. Co.*, 19 I. C. C. R., 128; *Industrial Lumber Company vs. St. L., W. & G. R. R. Co.*, 19 I. C. C. R., 50; *Lautz Bros. & Co. vs. L. V. R. R. Co.*, 17 I. C. C. R., 167; *In re Advances in Rates on Flaxseed*, 23 I. C. C. R., 272; *Fairmont Creamery Co. vs. C., B. & Q. R. R. Co.*, 22 I. C. C. R., 252. In all these cases the tariffs had been suspended, and the carriers had been required to pocket the loss of the revenues to which they were afterwards held entitled.

The fourteenth amendment to the Constitution prohibits the taking of property without due process of law. The property of appellants and of all railroads subject to this statute, is being taken and required to be taken upon the complaint of any shipper, or upon the initiative of the Commission, without a hearing, and with no provision and no legal remedy for reimbursement.

XI.

ANSWER TO PROPOSITION XI.—INTERFERENCE WITH INTERSTATE COMMERCE—EXCLUSIVE POWER OF CONGRESS.

The affidavits in this case (Abstract, 27-28; Record, 80-81, 174-175; Abstract, 34-36; Record, 95-99, 189-197) show the general conditions of congestion, and lack of property adjacent to these terminals convenient or proper for enlarging them except under the necessity of tearing down buildings located thereon and acquiring such property at a prohibitive cost.

These allegations as to congestion of terminals of appellants, and the effect of intracity switching as causing and increasing this congestion, are supported by the record of a case involving the investigation of the terminal facilities in Detroit of these very carriers.

Detroit Reconsigning case, 25 I. C. C. R., 392.

That case involved the congestion of Detroit terminals during the winter season of 1911-12, at the conclusion of which the bills in the present case were filed. (Abstract, 44; Record, 203).

Respondents in that case were the New York Central Lines, Grand Trunk Railway, Detroit & Toledo Shore Line, Detroit, Grand Haven & Milwaukee Ry. Co. (the latter three being the two appellants and the Shore Line mentioned in the bill), Detroit, Toledo & Iron Mountain Ry., Pere Marquette Railway Company and the Wabash Railroad Company. The particular point in issue was the policy of the carriers in charging $2 for reconsigning traffic destined to delivery points within the city limits of Detroit (local switching).

In the course of its opinion the Commission, discussing the record and the evidence in that case, stated (page 393):

> "Upon the protest, more particularly, of consumers and dealers in coal these tariffs were suspended for

the purpose of giving the Commission an opportunity to investigate the reasonableness and propriety of the proposed charge.

"*The congestion on the Detroit terminals was marked during the winter of 1911-12*, and there is every reason to believe that unless measures are taken to overcome the difficulties heretofore encountered it may recur during the coming winter and have a more or less adverse effect upon the interests of the general shipping public. The protestants assert that the terminal conditions at Detroit have very little to do with the congestion that has occurred. We think the record, however, makes it fairly clear that this contention is not well founded."

The Commission further found that such switching movements were in large measure the cause of congestion upon the terminal tracks of the companies. It was shown, moreover, in that case that it was the frequent practice of the shippers to use cars for storage purposes, and to keep them beyond the free time allowed under the demurrage rules. As to that the Commission said (pp. 394-395):

"Moreover, the use now made of the privilege within the switching limits has become more extensive than was formerly the case and proportionally more burdensome. Reconsigned cars, as we understand the record and what was said on the argument, also enjoy two demurrage periods. It is but natural also that coal dealers, so long as they may use coal cars for storage purposes, will not find it necessary to supply themselves with storage facilities. In times of car shortage the result is not only to deprive the carriers of the use of their equipment and of the full use of their terminal facilities, but, what is more important, to deprive the general shipping public of the full use of the equipment and terminal facilities of the carriers."

It is clear that the same result follows under the requirement of intracity switching whereby carriers are required to turn their cars over to other companies to remain on the

tracks of the other companies during the pleasure of the shippers, while in addition to their car shortage their burdens are increased by their being required to give the use of their own terminal facilities and team tracks to cars of such other companies from which they derive no through revenue, no opportunity of through haul, and are deprived of the use of the terminals during the same period for their own incoming and outgoing traffic, just to the extent of the use so made of those terminals for such local switching.

We have treated this subject as to the particular effect on interstate commerce in point IX of our original argument, pages 95 to 98. It is there shown that not only in fact, but from the necessary conclusion to be derived from the practical operation of these statutes and this order of the State of Michigan and the Commission of that state, interference with interstate commerce cannot but result.

Passing by for the moment the necessary effect of the proviso in section 3 of the act to regulate commerce upon any such regulation of a State law, it is apparent that that act prohibits the use of such instrumentalities for such services in the case of interstate shippers. There cannot be any interchange of terminals for such shippers, by reason of the prohibition contained in that section. It must necessarily follow that the traffic of interstate shippers coming in over or leaving the city of Detroit upon the lines of appellants will be required to wait for loading and unloading, while the cars containing traffic intrastate for the benefit of intrastate shippers occupy those terminals, and may be, and frequently are, as shown by the case just cited, used for storage, under the trivial penalty of the demurrage rules. Aside from the latter use, the interstate shippers will be deprived of these terminals during whatever period is required by the local shippers for their traffic locally consigned. These terminals are devoted to interstate commerce, by reason of the fact that a great part of the traffic carried on over them is interstate (Abst. 4, 27, Rec. 3, 80, 108, 175; see brief for appellees, page 51). The conditions of traffic

change from day to day and from month to month. During the period between the closing and opening of navigation, the conditions of congestion of the greater number of carriers in this country are too well known to require comment. The congestion need not be continuous in order to amount to an undue burden upon interstate commerce. If such congestion were absolutely continuous, the railroads could not effectively carry on through business.

Nor are any of the cases cited by counsel in point. *Louisville & Nashville Railroad Company vs. Kentucky*, 183 U. S., 503, deals only with rates fixed by a state commission upon services offered by the carriers. As we have repeatedly announced in our opening brief, the question of rates is not before this tribunal nor do we contend that for services actually rendered within the State, the Commission is without power to fix, subject to the limits of confiscation and the requirement of a reasonable return, the charges to be collected by the carriers. Again, the case of *A. C. L. R. R. Co. vs. Commonwealth*, 102 Va., 599, cited on the same page, was a case involving the validity of numerous rules made by the state commission with reference to the duty of the carrier and shipper *inter se*. None of them touched the question of intrastate switching. The court, moreover, refused to pass on the validity of these rules with reference to their effect upon interstate commerce, until concrete cases should arise (pages 618-19).

Before passing on the principal contentions under this head, namely, the effect of sections 1 and 3 of the act to regulate commerce, we must pause to answer one attempted distinction, in the brief for appellees (page 48):

> "But this movement of cars switched to and fro within the city terminal must be distinguished from the use of storage houses, engine houses, storage yards, and general terminal facilities."

That is, instead of taking the whole of appellants' terminals, appellees would take only part.

The team tracks of these carriers are their freight houses for the loading and unloading of carload freight. That they should be unroofed instead of roofed and devoted to carloads instead of less-than-carloads makes them none the less private terminals to be used only in connection with their main line hauls, and does not render them open to serve other carriers in the manner of a local terminal railroad, any more than the freight sheds, covered and used for less-than-carloads. It would be a startling doctrine if each railroad had to appropriate room and build sheds sufficient to accommodate the less-than-carload business of every shipper on other lines and of every other through carrier that desired to use those sheds for purely terminal delivery. The doctrine, the taking, are the same in both cases.

Again, to say that they must share all the team track facilities they now have is to say they must provide additional ones, because it precludes them from providing against congestion on their own lines save by the acquisition of terminals large enough to accommodate the business of other lines. Would any carrier go quietly ahead, as the railroads to-day are bound to do by reason of increasing business and the high values of property, and provide in advance for future needs by the expenditure of large sums, if it knew that just at the time its own business was increasing and it needed every available foot, or would in the near future require all the space already obtained, it would be required to share these terminals. Is the snatching of its property and devoting it to a local terminal service instead of a terminal for its own through service, an incentive to sagacious business methods and generous expenditure? If the covered freight sheds for less-than-carload business cannot be seized for such a purpose, neither can the uncovered carload receiving and discharging tracks of the railroad, the equivalent of the freight sheds, be devoted thereto.

Railroad Commission of Arkansas vs. St. L., I. M. & S. Ry. Co., 24 I. C. C. R., 292, involved a request for a shipper to have carload freight switched from one line to the team

tracks of another. The defendant there, as do the appellants here, denied that it held itself "out to the public as a carrier for the purpose of transporting freight from connections with the other lines to its own team tracks."

It was complained that the carriers performed industrial switching and refused team track switching. Aside from the question of discrimination there raised, which does not exist here, and the question as to the effect of having given service in the past, which, as shown under Point 13 of the argument in our original brief, at page 106, will not affect its right to withdraw at any time from rendering such service, the commission held (page 295):

> "Complainant further contends that defendant's refusal to switch carload freight from connections on other lines to its team track, while its practice is to switch carload freight from other line connections to industrial tracks, is unduly discriminatory and prejudicial and in violation of the act to regulate commerce. No question as to the amount which should be charged for the service is raised by the record. *The question is whether the defendant carrier is under the law obliged to perform this service because its practice is to switch carload freight from other line connections to industries located on its tracks.*
>
> "Switching to an industrial track is a service for which a regular tariff charge is frequently made by carriers and is over tracks or spurs as to which the cost of construction is generally borne in part by the owners of plants to which they extend. *Team-track delivery is a service rendered by carriers in receiving and delivering carload freight in connection with their own line business, and is over tracks owned by the carriers. It is a service for which no separate tariff charge is provided and which is analogous to freight depot service for less-than-carload freight. A freight depot owned and maintained by a carrier is a terminal facility for use in handling business from its own line and cannot, under section 3 of the statute, be used for handling business from other lines without its consent.*"

In support of the contention of appellees, that the last clause of section 3 of the interstate commerce act is not a restriction upon the action of the State, counsel cites the case of *State of Iowa vs. C., M. & St. P. R. R. Co.*, 33 Fed., 391. The decision will show that the opinion was predicated upon the fact that the tracks in question had been laid down and occupied under an express contract with the city, by which such tracks should be open to such uses. This is emphasized throughout the decision, and any remarks not based upon this determinative fact in the record are *obiter* and are overruled by this court in the Louisville case, *supra*.

We have shown at length in our opening brief, point VIII of the arguments, beginning at page 79, that section 3 of the Act to Regulate Commerce forbids the State to require the services and uses of appellants' terminals sought under the order of April 10, 1912. We desire to add to the authorities there cited the ruling in the Minnesota rate cases (*Simpson vs. Shepard*, 230 U. S., 352). The statement of those cases shows that the question before the court was the power of the State over rates for services actually rendered by the carriers, parties to that cause, within the borders of Minnesota. To that question and to the consideration of property confiscation by reason of the rates actually prescribed, the decision was limited. But the court, in the course of the consideration of the various arguments advanced, had reason to lay down certain fundamental principles as to the power of Congress over instrumentalities employed equally in interstate and intrastate commerce. On page 399, it was held:

> "There is no room in our scheme of Government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not

> to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

And the court, in support of this doctrine, cited among other cases, *Southern Railway vs. United States*, 222 U. S., 20, 26, 27, and *Mondou vs. N. Y., N. H. & H. R. R. Co.*, 223 U. S., 1, 47, 54, 55, both of which were cited and relied upon in our original brief. The former case held that the safety appliance act extended to cars used at the time exclusively in intrastate commerce and not in connection with any other cars or engines employed in interstate commerce. (Original Brief, pages 86-88).

So, in the present case, not only would necessary and inevitable interference with interstate commerce ensue if the services here in question should be required, but Congress has, in section 3, expressed its will and policy to be that carriers so engaged should not be required to devote the terminals, on their respective lines, to the use of any other line engaged in like business. (Original Brief, point VIII, beginning at page 79).

In speaking to the very point in issue in these two consolidated causes, this court, in the Minnesota Rate cases, *supra*, held, page 411:

> "When, however, the State in dealing with its internal commerce undertakes to regulate instrumentalities which are also used in interstate commerce, its action is necessarily subject to the exercise by Congress of its authority to control such instrumentalities so far as may be necessary for the purpose of enabling it to discharge its constitutional function. *Southern Ry. Co. vs. United States, supra; Baltimore & Ohio Railroad Co. vs. Interstate Commerce Commission, supra.*"

As the State cannot exclude interstate cars from these tracks directly to await the convenience of intrastate traffic, so it cannot exclude them indirectly by allowing to intrastate traffic a power of occupation and a right to use, contrary to the inhibition of the third section of the Act to Regulate Commerce. Congress has in that section expressed its will and policy. This was the clear doctrine declared in the case of *Northern Pacific Railway vs. Washington*, 222 U. S., 371, more fully quoted from in our Original Brief, pages 83 and 84. Mr. Chief Justice White, announcing the opinion of the court, laid down the rule that the mere expression of the will of Congress to enter the field and an assertion of its power by the fact alone of the manifestation of its intention to act upon the subject at once effectually excluded the power of the State.

Congress, in section 1 of the amendment to the Act to Regulate Commerce, known as the Hepburn act, approved June 29, 1906, expressly enacted that "the term 'railroad' as used in this act * * * *shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property.*"

Congress by that act took over to itself the control of all such switches, spurs, tracks and terminal facilities employed in interstate commerce, and having entered the field, thereby effectually excluded the States, regardless of the coincident employment of such instrumentalities in intrastate commerce. It is significant that in the reservation of power to the States, the control of "switches, spurs, tracks and terminal facilities" was never remitted. The power to make regulations and rates for property actually transported over such facilities was left to the jurisdiction of the individual States when the transportation was wholly therein, but none of the power to regulate, require

the use of, or govern *these instrumentalities* thus appropriated in the first words of that amendment was yielded again to State control. It must follow, under the doctrine of the *Northern Pacific Ry. Co. vs. Washington, supra*, and of *Southern Railway Co. vs. U. S.*, that, Congress having not merely expressed its sovereign will and policy upon the employment of these facilities, but having actually taken to itself exclusive control thereof, the State of Michigan cannot legislate thereon.

We need pause but a moment to refer to the cases cited by counsel in support of his contention. In the paragraph under discussion, at page 51, he refers to *Atlantic, etc., Railroad Company vs. Mazursky*, 216 U. S., 122. That case involved only the question of the jurisdiction of the State to require settlement within a given period for loss or damage to property while in possession of a common carrier, and requiring a penalty on failure to adjust such claim within the time fixed.

The case of *New York, Lake Erie & Western Railroad Company vs. Pennsylvania*, 158 U. S., 431, cited by counsel in support of these contentions, involved the question of the constitutionality of a tax upon tolls received by the railroad from other railroad companies for the use by them of so much of its railroad and tracks as lay in the State of Pennsylvania for the passage of trains owned and hauled by such companies in interstate commerce. The question of the limits of the taxing power is not involved in the present controversy, and the decisions of this court as to the right of a State to tax property within its limits, to be measured by a proper proportion of the business done over those tracks, limiting such taxes to a bona fide tax upon property within its boundaries, have no bearing on the effect of attempted control of terminals by a State, inconsistent with and excluded by the Federal Act to Regulate Commerce. The case of *Atlantic Coast Line Railway vs. Commonwealth* has already been discussed.

Counsel further states (p. 53) that the statute of Michigan

"now provides that if a congestion shall arise, a substituted delivery at other convenient tracks is possible." While the application to the shipper is being made under the terms of the statute to discover whether or not he desires delivery on another track, or to await the release of a particular track after the placing of his car, his car must be held in the yards of the company. If he desires delivery on another track, interstate commerce will be excluded from that track while the services not allowed by the Act to Regulate Commerce are being rendered; and if the car awaits delivery to a named track, not only is that car kept out of service for the purpose of interstate or intrastate commerce during that time, and through traffic revenues lost to the carrier, but the team track of the company must be further devoted to its loading or unloading. In one place or another, at one time or another, interstate cars and interstate traffic are shut out from these facilities.

Counsel further states (p. 54) that the result of setting aside this order will be to effectually hinder interstate commerce by denying to shippers the "opportunity of shipping to or from the Grand Trunk tracks in Detroit if the line haul is performed by another carrier, or will be denied that right except at the whim of the appellants."

It is sufficient to answer that first of all the order of April 10, 1912, only comprehends intrastate commerce, and could in no event confer the right on interstate shippers to obtain this service or use of the property of appellants; second, the Act to Regulate Commerce forbids such services or uses to interstate shipments; and, third, such services are denied to all alike, and there can be no question of a whim or caprice on the part of the appellants, as no discrimination can arise where all in a class are treated alike.

The propositions under headings XII and XIII are covered under point X, page 99, and point XIV, page 107, of our original brief.

XII.

The Result of Counsel's Assertion that These Services are a Public Necessity and Require Appellants' Terminals.

The fallacy of counsel's insisting that the use of terminals here required is not for another carrier, but for the shippers, the public, is seen in the necessary result that such a taking must first be adjudged necessary in the manner fixed by the State Constitution. The Constitution of Michigan recites:

> "When private property is taken for the use or benefit of the public, the *necessity for using such property* and the just compensation to be made therefor, except when to be made by the State, shall be ascertained by a jury of twelve freeholders in the vicinity of such property, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law." Art. XIII, sec. 2.

In *Berrien, etc., Co. vs. Circuit Judge*, 133 Mich., 48, 54, it was held:

> "Under the Constitution of Michigan, article 18, section 2, [The article and section of the earlier Constitution corresponding and substantially similar to the portion of the present Constitution quoted *supra*] *the necessity for the taking* as well as the compensation for the property, *must be determined by a jury*, or by commissioners appointed by a court of record. This constitutional tribunal, and not the legislature, must determine whether public necessities require this improvement [a dam] in the navigability of the St. Joseph River."

We have shown that to require of appellants the services demanded in the order of April 10, 1912, is to take the use of their property. If it be contended that the use sought is not exclusive the answer is found in the case of *G. R. N. &*

L. S. R. R. vs. G. R. & L., 35 Mich., 265. That was a bill to enjoin defendant from building a spur track across the lines of plaintiff to reach and serve certain industries beyond. That would be clearly only a partial use; the trains of plaintiff could have passed unobstructed save when the crossing was occupied by defendant. The obstruction and use would be far less than in the present case, for no space was sought on which to load and unload cars, but merely a passage way for their occasional transportation to points one side or the other of plaintiff's property. But the Supreme Court of Michigan held (page 272):

> "Now, while railroads in one sense are for the use and accommodation of the public, and to this extent may be considered as used for public purposes, the mistake in this case consists in assuming that the property by them acquired, having been taken for a public purpose, may be used and appropriated by any other corporation for a similar public purpose, without making compensation therefor; *that property public for one purpose shall be public for all.*"

The appellees, Michigan Railroad Commission and the commissioners thereof, appointed by the Governor (Rec., 2), could not determine the public necessity requiring this taking.

These authorities are alone sufficient to require a reversal of the decision below, on counsel's own theory, as the order requiring this taking of property was entered by a body prohibited from such action by the State Constitution.

CONCLUSION.

We have already treated, under separate paragraphs, the various reasons for sustaining the acts and order in question, put forward by counsel on page 57 of his learned brief. We have only to note that the co-ordination of terminals into a single system contended for by counsel in that conclusion

was the very point contended for in the case of *United States vs. Railroad Terminal Association of St. Louis*, 224 U. S., 383. In that case the single terminal system, which comprehended all the terminals within the city, both existing and possible, was ordered dissolved.

Before dealing with the question of the ideal toward which counsel is striving, we must correct the expression that the practice he pleads for "is in accord with intelligent railroad practice in substantially every terminal of the land." While we are not familiar with the practice in all the railroad terminals of the country, we do know that the North Western Railway in the city of Chicago has withdrawn its team tracks from such interchange service as is here sought within what is called the inner zone of that city. We also are informed that a petition has been filed against the Railroad Commission of Michigan asking that it be restrained from enforcing a certain order requiring team track service in the city of Jackson at specified rates and alleging that it has no jurisdiction over those team tracks, and that a stay order was recently granted by the State court in accordance with the prayer of that petition.

We might also point out that the district court of the United States for the district of Indiana has issued its interlocutory injunction, enjoining and restraining the Indiana Railroad Commission from requiring these identical services from the Grand Trunk Western Railway Company in the city of South Bend, Indiana. That cause is No. 7374 on the docket of that court, on the chancery side thereof, and is pending on application for perpetual injunction.

We are also informed that the Lake Shore & Michigan Southern and the Vandalia roads have both brought their petitions in the State court of Indiana to enjoin the Indiana Railroad Commission from requiring these same services and uses of their team tracks and other terminals in the same city. The practice in Detroit also has been but irregular and intermittent as to practically all the carriers there; while there are five belt lines operating in that city.

We have only named these instances as tending to somewhat qualify the rather broad assertion of counsel as to the universal practice of railroads throughout the country.

The alleged serious consequences so urgently expressed by counsel, of the decision holding this order and the acts under which it purports to be made invalid so far as said acts authorized that order, were all advanced and considered in *Louisville & Nashville R. R. Co. vs. Stock Yards, supra.* The strong dissenting opinion in that case urged the ultimate effect upon interstate commerce, the power of regulation of the State, the same contentions as to the necessity of these uses and of yielding cars to other carriers for local switching or transportation within city boundaries (both as specifically required by the petition and decision of the lower court). But this court ruled that none of these services could be required, and in pronouncing the law that must control this case said (212 U. S., at 145):

> "If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville Railroad, can get the use of this costly terminal and make it do the switching necessary to that end upon simply paying for the service of carriage."

The question was not of compensation. It was a fundamental property right, determined by the calling of the carrier as an interstate and intercity artery of commerce.

There never has been a case decided by this court in which the doctrines laid down in that case have been questioned, qualified, or overruled. This is the only case, save its predecessor, *Central Stockyards vs. Louisville*, 192 U. S., 568, in which the precise question here involved has been considered. Other cases relating to switching have concerned only proper terminal deliveries on the lines of the carriers performing some portion of the line haul, or rates or duties for the performance of which the carriers were, at the time of the decisions, offering their facilities without

question, or cases involving discrimination by reason of performing such service for certain individuals in a class and refusing the service to others.

We submit that the principle of that case; the control Congress has assumed of these tracks and terminal facilities employed in interstate commerce under section 1 of the Hepburn act; and its will and policy as to the use of these instrumentalities expressed in section 3 of that statute, together with the other matters and things in these briefs set forth, all require that the decision below be reversed, and that an injunction issue in accordance with the prayer of the bill.

Respectfully submitted,

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No. 382.

SUPREME COURT OF THE UNITED STATES

October Term, 1913.

No. 382.

Supreme Court, U.S.
FILED.
OCT 14 1913
JAMES H. McKENNEY
Clerk

GRAND TRUNK RAILWAY COMPANY OF CANADA, AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,

Appellants,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON AND FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

BRIEF AND ARGUMENT FOR APPELLEES

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DETROIT:
CONWAY BRIEF CO., 142-150 LAFAYETTE BOULEVARD
1913

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SUPREME COURT OF THE UNITED STATES

October Term, 1912

No. 853.

GRAND TRUNK RAILWAY COMPANY OF CANADA, AND DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY,

Appeliants,

vs.

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Appellees.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

BRIEF AND ARGUMENT FOR APPELLEES

INTRODUCTION.

This appeal presents to the Court the controversy that has arisen out of the effort of the Michigan Railroad Commission to compel the complainants and appellants to

publish rates applicable to the movement of cars between industries having private sidings on the appellants' lines and hold or team tracks on those lines and between junction points of the appellants with other carriers within the corporate limits of Detroit and hold or team tracks on appellants' lines.

The question arose upon an order made April 10, 1912, by the Michigan Railroad Commission which suspended a tariff theretofore issued under which the Grand Trunk team tracks were withdrawn from all intra-city, intrastate and interstate switching movements, except as to the Detroit & Toledo Shore Line, with which the Grand Trunk System had a contract for terminal switching.

The appellants, whom we will refer to as the Grand Trunk System, two days after the promulgation of the Commission's order suspending its tariff, filed their bill in this cause. The application for an interlocutory injunction was heard by Circuit Judges Knappen, Denison and District Judge Sater, of the Sixth Judicial Circuit, and the relief was denied.

The contentions of the appellants are that the order of the Michigan Railroad Commission suspending the tariff is void; that the provisions of the Michigan statute which authorized the suspension of the tariff are void; that the provisions of the Michigan statute under which the Commission seeks to compel the Grand Trunk System to perform what is denominated an intra-city switching service, are void; and that the appellant railroads can refuse to accept cars at junction points within any city to be delivered to team tracks upon appellants' lines, and can refuse to move cars from team tracks on their lines within the city to junction points with any other carrier in that city for movement by the latter carrier to points beyond that city, and

finally can refuse to join in a movement of cars from point to point within the limits of any city.

The case, therefore, presents the question of the power of a railroad to refuse to turn its cars over to another railroad for movement beyond their junction point when the junction point is within the city in which the cars are loaded, and of its power to refuse to accept cars at a junction point in any city and deliver them to team tracks on its lines, and finally of its power to refuse to switch cars that are moving from point to point in the city via junctions with other carriers.

To sustain the contention of the appellants would enable the railroads whose tracks now enter and serve any given community to prevent any other railroad whose tracks may reach that city but do not enter it from handling freight to and from that point. It would enable carriers by combination and contract to effectually close the terminals of every industrial center. It would prevent the interchange of traffic, except as an incident to the line haul of the car, and would most effectually destroy the free interchange of commerce.

To sustain the order of the Commission will mean to facilitate the interchange of traffic, promote the prompt and efficient delivery of cars, encourage the use of railroad facilities, confirm to the shipper the right to route his freight to the ultimate destination, stimulate competition between carriers, and tend to destroy a pregnant opportunity for discrimination in the handling of traffic.

ABSTRACT OF ARGUMENT.

I.

The order of the Michigan Railway Commission was authorized by the laws of Michigan.

II.

The order required a transportation service in no respects distinguishable in principle from track connection and interchange of traffic, and the statutes authorizing interchange of traffic and track connections have been sustained as not in violation of the Constitution.

III.

The order is not void as being in violation of the clause in Section 7a of Act 300, Public Acts of Michigan, 1909, as follows:

> "Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to any other railroad engaged in like business."

The effect of that clause is modified by the provisions of the statute giving the Commission authority to compel through rates and through routes.

IV.

Nor is the order void as in conflict with the clause as to the use of tracks and terminals since it does not compel the appellant to give the use of its tracks and terminals to another railroad.

V.

The order is not in conflict with the doctrine of this

Court in *Louisville etc. Ry. Co. vs. Stock-Yards Co.*, 212 U. S., 132.

(a) That case dealt with the delivery of livestock at stockyards, a service distinguishable from that in question here.

(b) That case dealt with a constitutional provision providing for interchange of traffic but making no provision for compensation.

VI.

Since a carrier cannot refuse to interchange traffic in its terminals when reasonable compensation is paid therefor, it cannot choose the carrier with whom it will interchange nor prescribe the terms and conditions thereof.

VII.

The value and extent of the terminal in which the interchange is effected is not important except in determining what shall be a reasonable compensation for the service performed.

VIII.

Nor is the order void because neither it nor the statute provided protection for damage to cars or for loss of traffic.

IX.

The order is not void as imposing the obligation of doing "intra-city switching" upon the appellant railroads. The appellants as railroads are incorporated to do switching and perform a terminal service.

X.

Section 10-b of Act 300 of the Public Acts of Michigan,

1909, authorizing the suspension of a tariff which increases freight rates does not violate the 14th Amendment because it fails to provide for reparation to the carrier if the rates, upon investigation, be found to be reasonable.

XI.

Neither the order complained of nor the Statute of Michigan under which the order is made, impose any burden upon interstate commerce, nor are they void by reason of any conflict with any provisions of the Interstate Commerce Act.

XII.

The order does not require a service which obstructs the United States mail, and no such obstruction will in fact be caused.

XIII.

The Michigan Railroad Commission Act does not impose enormous fines and penalties and is not unconstitutional within the rule of "Ex parte Young."

ARGUMENT.

I.

THE ORDER OF THE MICHIGAN RAILROAD COMMISSION OF APRIL 10TH, 1912, WAS AUTHORIZED BY THE LAWS OF MICHIGAN. THE LAWS OF MICHIGAN REQUIRE THE APPELLANT TO MAKE THIS INTERCHANGE OF TRAFFIC.

The opinion of the court below rightly pointed out that it has "been the settled policy of the State of Michigan for more than thirty years" to require railroads to make track

connections with connecting lines to permit the transfer of loaded cars.

Act 79 of the Laws of 1873 provided in Section 15 as follows:

> "Every corporation owning a road in use, shall, at seasonable times and for a reasonable compensation, draw over the same, the merchandise and cars of any other corporation. If the corporation cannot agree upon the stated periods at which the cars shall be so drawn, and the compensation to be paid, the said commissioner shall, upon petition of either party, and notice to the other, and after hearing the parties interested, determine the rate of compensation, and fix such periods, having reference to the convenience and interest of the corporation and the public to be accommodated thereby."

By section 16 of the same Act, it was provided that

> "Where two or more railroads terminate at the same place or connect in the same city, or town, each shall, for a reasonable compensation, provide upon its road at such terminus or connection, suitable depot accommodations for such passengers or merchandise of the other road terminating at the same place or connecting with it, and shall receive the same in the manner it receives and delivers its own passengers and freight, and at the rates provided by law."

Section 15 was amended by Act 91 of the Public Acts of 1875, to read as follows:

> "Every corporation owning a road in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any corporation or individual having connecting tracks; provided, such cars are of the proper

gauge, are in good running order, and properly loaded."

These statutes recognized the necessity of perfect interchange of traffic as between carriers.

The Supreme Court of the State (Cooley, J.) in 1881, affirmed the same principle. In

Mich. Central R. R. Co. vs. Smithson, 45 Mich., 212, 221,

it said:

"The primary fact that must rule this controversy is that the Michigan Central Railroad Company is compelled to receive and transport over its road all the varieties of freight car which are offered to it for the purpose and which are upon wheels adapted to its gauge. It is compelled to do so, first, because the necessities of commerce demand it. It cannot and would not be tolerated that cars loaded at New York for San Francisco or at Boston for Chicago should have their freight transferred from one car to another whenever they passed upon another road. * * * * But, third, the statute itself required it. It is provided by General Laws, 1873, p. 99, that every corporation owning a road in use shall at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation. The necessities of commerce require this with such imperative force that there could scarcely be a refusal to obey this law."

In 1907 the present Michigan Railroad Commission was created by Act 312 of the Session Laws of that year.

It was provided that the act should apply to the transportation of passengers and property and to the "receiv-

ing, switching, delivery, storing and handling of such property." (Sec. 3a.) The term "railroad" was defined to include terminal facilities, switches, spurs and side tracks, and "any kind of terminal facilities." (Sec. 3d.) The term transportation was defined to include "all services in connection with the receipt, delivery, elevation, switching and transfer in transit * * * of property transported."

Every common carrier was required to "provide and furnish transportation of passengers and property" etc.

By Section 7 (a) it was provided:

> "All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith and shall transfer and deliver without unreasonable delay or discrimination any freight, or cars, or passengers destined to any point on its own lines or on any connecting line, and shall not discriminate in their rates and charges between such connecting line: PROVIDED, Precedence may be given to live stock and perishable property, but this shall not be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

Section 7 (c) repeated the provision of the Act of 1873 that each railroad should at reasonable times and for a reasonable compensation draw the cars of owners of connecting tracks.

In 1908 the Michigan Railroad Commission acting under this statute ordered the Michigan Central Railroad to make a connection with the Detroit United Railway. It was objected that Section 7 (c) above quoted was invalid The Court sustained the action of the Commission.

Michigan Railroad Commission vs. Michigan Central Railroad, 168 Mich., 230.

In 1909 the Commission Act was re-enacted by Act 300. The provision of the 1907 statute applicable here remained unchanged. To the section as to switch connection and interchange of traffic, however, there was added a provision that a shipper should have the privilege of routing the shipment.

In the Session Laws of 1911 the statute was again amended by Act 139. Section 7 (a) remained unchanged, but a new subdivision was added, 7 (d), as follows:

> "Every common carrier operating within this State shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: PROVIDED, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission

> signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

The law in effect when this case arose was the Act as amended by the Act of 1911.

Since that time however, the Legislature has again dealt with this section.

On May 14, 1913, Act 370 of the Legislature of 1913 was approved. It re-enacted Section 7 but added to the words in subdivision "a":

> "Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business":

the words

> "Except that carload traffic shall be received and transportation from any junction point or transfer point or intersection with another railroad in the same city or town as hereinafter provided."

It is suggested that the words "as hereinafter provided" refer to subdivision (d) of this section quoted supra and that therefore the exception is limited to freight "the origin and termination of which are both within the boundaries of the same municipality."

But this is too narrow a reading of (d). That subdivision is not limited to "traffic offered for transportation under the usual conditions locally consigned between points in the same city." It extends as well to carload freight received from junction and transfer points or intersections with another railroad in such city or town etc; even though such traffic may have entered the city via such connecting carrier. If brought to the city and then ordered switched on the lines of another carrier it is "locally" consigned and offered "under the usual condition." The words "such carload traffic" refer to "carload traffic tendered for transportation under the usual conditions."

There can be no valid distinction between requiring a carrier to take carload traffic originating inside the city limits and not requiring it to take it when it originates just outside the limits. In either case it is the same service required of the delivering carrier. The statute must be read reasonably and any other interpretation would be forced. The absence of the words "locally consigned" in the clause in Section 7 (a) strengthens this view.

Act 389 of the Public Acts of 1913 also dealt with this section. It re-enacted section 7 but added a further subdivision as subdivision "e" requiring carriers to issue bills of lading.

It is quite apparent that the purpose of this act was, as set forth in its title, to add to it this subdivision (e) and nothing else. It is likewise quite apparent that the purpose of Act 370 was to definitely eliminate from the law the provision as to the use of terminals in so far as it prevented the switching of freight from one road to another irrespective of its origin. It left to the carrier the protection against other use of its terminals but the Legislature evidently having before it this litigation aimed to

remove all doubt of its understanding of what the law should be.

Subdivision (d) read in connection with subdivision (a) as to the shipper's privilege of routing makes it clear that a complete provision was intended to permit the shipper to direct the movement of any car.

The provision in subdivision as to the routing of freight following the clause as to the use of terminals makes it clear that the section and act read as a whole gives the shipper the right to load his car upon the tracks of one carrier and to require that carrier to transport it to the junction with another carrier whether that junction be in the same city or not and to deliver it to the connecting carrier for further transportation. If this is not so the provision for through routing is nugatory and the shipper from the siding of one road has no outlet to any other road. No authority was needed from subdivision (a) to make this through routing possible. All the more reason should there be for applying the same rule to the reverse of the movement and requiring the carrier to complete the haul by accepting the car at the junction at the destination for delivery elsewhere on its own tracks.

II.

THE ORDER REQUIRED A TRANSPORTATION SERVICE IN NO RESPECT DISTINGUISHABLE IN PRINCIPLE FROM TRACK CONNECTION AND INTERCHANGE OF TRAFFIC, AND THE STATUTES AUTHORIZING INTERCHANGE OF TRAFFIC AND TRACK CONNECTIONS HAVE BEEN SUSTAINED AS NOT IN VIOLATION OF THE CONSTITUTION.

The order requires a transportation service—an interchange of traffic. It is predicated on track connections

which the Commission can enforce and which unless such an order is effectual would be worthless if made within the limits of a city. Its enforcement will *permit through* routes by the interchange of traffic at all points.

We have already made reference to the Michigan statute requiring interchange of cars and of freight and passenger traffic. The provisions of the Statute of 1909 were explicit as to this. Similar provisions have, as we have pointed out, been in the statute for many years and have been sustained and enforced by the Supreme Court of that State. *Michigan Railroad Commission vs. Michigan Central Railroad, supra.*

The lower Court in its opinion pointed out that these requirements of track connections and interchange of traffic did not amount to the taking of property without due process of law.

In *Wisconsin etc., Ry. vs. Jacobson*, 179 U. S., 287, a track connection had been ordered by the Railroad Commission of Minnesota under a statute that provided that track connections and interchange of traffic could be compelled under reasonable terms and reasonable conditions. The Court said:

> "Can it be possible that a railroad chartered and built primarily in the interest of the public can legally refuse the track connection directed in this case? * * * We think these questions should receive a negative answer. The interest of the public should not be thus wholly, and it seems to us unjustifiably, ignored. * * * We think this case is a reasonable exercise of the power of regulation in favor of the interest and for the accommodation of the public, and that it does not, regard being had to the facts, unduly, unfairly or improperly affect the pecuniary rights of the plaintiff in error."

In the case of *Minneapolis & St. Louis R. R. Co. vs. Minnesota*, 186 U. S., 257-263, the constitutionality of the Minnesota Railroad Commission Act was attacked on the ground that it would compel two or more roads to make a joint tariff. The power of the legislature to compel the making of such a joint tariff was upheld and the Jacobson case was referred to as authority.

These cases deal with connections and interchange as incident to the line haul of the freight car. They do not deal with the movement of cars within the limits of a city or town, or the interchange of cars where the receiving road does no more than switch such cars to its tracks on which they are to be unloaded.

The Court is asked to establish a distinction in the legal rights of the carriers between the interchange of cars as an incident to the line haul outside of the city limits, and the interchange of cars inside of the city limits where the line haul had been completed or is about to begin, or where the entire movement from the point of origin of the car to its destination is within the city limits.

There is no distinction in the statutes of Michigan so far as these two services are concerned. The term transportation in the Michigan statute covers all the instrumentalities and facilities of shipment;—all "services in connection with the receipt, delivery, elevation, switching, transit, ventilation and refrigeration or icing, storage and handling of persons or property transported." The act regulates common carriers and the receiving, transporting and delivery of persons and property. Common carriers are construed to mean all persons whether corporate or otherwise, who operate a railroad or "switches, spurs, tracks, side tracks, and terminal facilities." The act makes no separate definition of a tereminal railroad separate from any other railroad, nor provides any separate method of regu-

lation of any road that performs any service within the limits of any city or municipal corporation.

The establishment of switch connections and team tracks is not limited to the territory either within or without the city. The attempted definition of the intra-city switch as a service to be distinguished from the general service of transportation finds, therefore, no justification in the Michigan statutes. This movement is there regulated as a part of the transportation service to be performed by the railroad.

The Michigan statutes provide no method for incorporating to perform the intra-city service or a terminal or belt line service. A corporation intending to limit its activities to any such service must be formed under the general railroad law of the State.

In no way, therefore, does the State of Michigan recognize any distinction between the general service of transportation which covers the haul of cars from point to point in the state and any service limited, as is contended by the appellants here, to a haul from point to point within the limits of any municipality.

That such a distinction, if it were attempted to be made, would be impracticable and ineffectual seems clear. The team tracks established by any carrier are not established with reference to the corporate lines of any municipality. They are established under the power of eminent domain, where traffic originates, having a due regard to the cost of their installation. They may be within or without the limits of the city. They would, as a general thing, be within the switching limits established by the carriers. These limits have no proper and necessary relation to the limits of the city.

If a distinction could be established between the so-called intra-city service and the service through connections established between carriers elsewhere than within the limits of the city, the car loaded upon the team track established adjacent to the main line of a carrier beyond the limits of the city of Detroit could compel a delivery by that carrier at its junction with another carrier within the limits of the city of Detroit for the purpose of transportation by the latter carrier to a distant desination. But the car loaded upon the team track within the limits of the city of Detroit could not compel such delivery. More than this, a team track beyond the limits of the city of Detroit, situate on the main line of the Michigan Central Railroad, would receive from the Grand Trunk a car brought to the city of Detroit by the latter road, but the Michigan Central team track within the city would not receive such car though both team tracks, whether within or without the corporate limits might be situate at points equally available for the distribution of freight in the city of Detroit and might stand in exactly the same relation so far as the terminal facilities of the carriers entering Detroit were concerned.

If distance be any criterion, the distance of an intra-city haul, as pointed out by the lower court, may often be greater than a haul from one city or town to another.

It is significant that the statute as to giving the shipper the right to route his freight, makes no distinction so far as intra-city service is concerned. If that shipper desires that the road to which he delivers his car shall route that car to a junction point within the city where it is loaded and thence by the lines of the connecting carrier to its ultimate destination, so far as the statute in reference to through routes and through rates is concerned there is no limitation on his right so to do.

We insist, therefore, that there is no distinction between the general service of transportation and the so-called intra-city service or terminal service.

III.

THE ORDER IS NOT VOID AS BEING IN VIOLATION OF THE CLAUSE IN SECTION 7-A OF THE STATUTE.

> "Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business,"

SINCE THE EFFECT OF THAT CLAUSE IS MODIFIED BY THE PROVISIONS OF THE STATUTE GIVING THE COMMISSION AUTHORITY TO COMPEL THROUGH RATES AND THROUGH ROUTES.

It is contended that, notwithstanding this service may be a transportation service, as defined in the statute, to compel it to be performed would be an unlawful taking of property because it would involve that the appellants be compelled to allow any carrier to use their terminals.

The clause in Section 7-A

> "nothing in this act shall be construed to be requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business,"

is a familiar clause in the statutes of various states and is contained in the Interstate Commerce Act, Section 3. It ante-dates as a part of this act the Hepburn Amendment of 1906, before which the Commission had no power to compel through rates or routes. It had been suggested that one reason why the Commission could not compel such through routes and through rates was that this clause in the statute prevented the use of tracks and terminal facilities of one

carrier by another carrier. But the Hepburn Amendment added to the statute a requirement for the establishment of through routes (section 1) for the interchange of traffic (section 3) and for the making of through rates by the Commission (section 15), without eliminating the clause in 7-A.

In the cases which arose before 1906, it was clearly indicated that if the Commission could compel through routes and through rates it would mean the use to a certain extent by one road of the others tracks and terminal facilities.

In *Kentucky & Indiana Bridge Co. vs. Louisville & Nashville R. R. Co.*, 37 Federal, 629-630, the Court said:

> "After a careful examination of the act and the arguments of counsel and authorities cited, we fail to discover any such requirements. (Viz, to interchange traffic on through rates.) * * * Such arrangements which usually include the reciprocal interchange on cars and the use of each others tracks and terminals are permitted by considerations varied and complex."

This language was cited with approval in *Little Rock and M. R. R. Co. vs. St. Louis & M. R. R.*, 39 Fed., 400.

Manifestly, through routes could not be established and enforced without a car passing through the terminal of another carrier. It could not be detached from the locomotive of one carrier and switched on an interchange track to the tracks of the second carrier and then taken by its motive power to continue the line haul without the terminal facilities, at least in a limited sense, of the second carrier being utilized. The car at least would move over the tracks of the second carrier.

If it were ever intended by this provision to prevent the utilization of its tracks and terminal facilities in this way

that intendment was effectually destroyed by the Hepburn Amendment.

IV.

NOR IS THE ORDER VOID AS IN CONFLICT WITH THE CLAUSE AS TO THE USE OF TRACKS AND TERMINALS. IT DOES NOT COMPEL THE APPELLANTS TO GIVE THE USE OF THEIR TRACKS AND TERMINALS TO ANOTHER RAILROAD.

If an interchange of traffic at a terminal midway on the line haul does not involve the use of a carrier's tracks and terminals, within the provisions of this section, it is impossible to see how an interchange of traffic after it had crossed the limits of a city but was still several miles from its ultimate destination would be within the meaning of the clause under discussion.

In *Cardiff Coal Co. vs. C. M. & St. P. Ry. Co.*, 13 I. C. C., 460, a through route was enforced in spite of the clause in Section 3 of the Interstate Commerce Act, and the Commission said:

> "As we understand the matter, the terminals of the railroad company are constructed for no other purpose than to serve the shippers, and the shippers have the right to use them for all legitimate purposes."

This case dealt with the interchange between two carriers and through rates as part of a line haul.

The case of *St. Louis, Springfield & Peoria Railroad et al vs. Peoria & Pekin Union Railway Co.*, 26 I. C. C., 226, concerned the interchange of traffic after it had reached the city of Peoria over the lines of the petitioner, though the petitioner and the defendant both operated lines in the city of Peoria. It dealt with a situation very similar to that outlined by the appellant.

The St. Louis, Springfield & Peoria Railroad applied to the Interstate Commerce Commission to compel the Peoria & Pekin Union Railway Co. to establish through rates with it. The latter road had tracks and terminals at Peoria; the former desired to deliver cars to it at its junction in Peoria and compel the delivery of those cars at team tracks and sidings in Peoria. It was objected that the St. Louis road sought to use the Peoria road's terminals. The Commission (26 I. C. C. 226) declared that such was not the case. It adopted the contention of the St. Louis road saying:

> "Petitioners do not wish to store cars in the yards of respondent nor to use its round houses and repair shops nor to use its freight depot or station, nor to use its passenger depot, nor to have respondent make or break up trains for it."

Continuing, the Commission said:

> "Under the facts of this case complainants seek from defendant a transportation service which we believe the latter is obligated to furnish at a reasonable charge. In support of its contention that what complainants desire is the use of its terminal facilities, which, under the third section of the act may not be required, defendant relies upon a number of state and federal court decisions. The decisions cited were all rendered prior to the amendments to the act which make it the duty of carriers subject thereto to furnish transportation, as defined in the act, upon reasonable request, and to establish through routes and joint rates. We cannot assent to the argument of defendant that, when it is required to transport cars to or from complainants' terminal from or to industries on its lines or connections with other carriers in Peoria, it is

> giving complainants the use of it stracks and terminal facilities within the meaning of the third section. It is obvious that transportation by a railroad company is impossible unless tracks are used, and shipments moving interstate generally pass through one or more terminals in the movement from point of receipt to point of delivery. The contention made by defendant, if admitted, would completely nullify the power given the Commission in the act to establish through rates."

This definite interpretation of the very language of the Michigan statute by the body to which has been committed the supervision of the interstate carriers should have the greatest weight. That Commission recognizes that if a prohibition against use of "terminals" means that traffic cannot be delivered in any city except upon the sidings and team tracks of the carrier which hauls the car to that city commerce will be impeded and destroyed; traffic will be denied access to a city unless it originates on the line of carrier having sidings in that city and will be refused an outlet except over the tracks of the originating carrier.

The Interstate Commerce Commission justly said (Peoria case supra):

> "If the defendant 'has the right to absolutely refuse the use of its terminals and facilities to complainants,' then it also has the right similarly to refuse the use of its terminals and facilities to every one of the other 11 carriers which now serve Peoria by means of its facilities. In other words, the defendant asserts the right literally to seal the city of Peoria through the instrumentality of the rails owned by it and hold that community as a closed domain. And why? Because the de-

fendant regards these terminal properties as its private property, subject to no limitations except such as in here in all other forms of private property.

"This suggests the inquiry how it is possible that property which was acquired under eminent domain and which is affected with a public use and which, as a matter of fact, is now being devoted to a public use, can be purely private in any accepted sense of the term? It suggests the further inquiry, in what respect is the public interest which affects a carrier's terminal properties different from the public interest which affects the remainder of the carrier's property? In the valuation of the property of public utilities for the purpose of testing the reasonableness of their charges it is not customary to include purely private property as such. The whole theory of regulation rests, not upon an assumption of private property, but of private property devoted to public use, and property which is devoted to a public use is to that extent not private but quasi-public. If the terminal properties of carriers are, as a matter of fact, private to such an extent that their owners may 'absolutely refuse' access to them and use of them unless any terms which they may see fit to dictate are met, should not their value be deducted from the gross value of the carrier's property in order to arrive at that 'fair value' upon which every carrier is entitled to earn a reasonable rate of return?

"These are among the momentous and severely practical questions which arise out of the situation presented by this case. If a carrier receives fair compensation for the service it performs, how can it be claimed and argued that its property is being

confiscated as a result of the compulsory performance of such service? If the respondent receives fair compensation for the service which the petitioners herein desire it to perform, there can be no question of the confiscation of property. The terminal properties of carriers, like all other parts of their property, are devoted to the public use and must be treated exactly as all other parts of the property of common carriers are treated in carrying out the spirit and letter of regulatory statutes. *Respondent is not asked to 'give' the use of its terminal properties, nor any part of them, to any other carrier. It is asked to perform a service upon reasonable and just terms.* The performance of such a service is the very reason of its existence. If the contention of respondent to the effect that its terminal properties are absolutely subject to its determining will were to be upheld, every community in this country would to that extent be absolutely at the mercy of those who control the existing terminals. Terminal properties are devoted to the public use of the whole of the communities in which they have been created. They are not a pre-empted domain, against which the public can assert no rights and upon which it may impose no duties. If such a doctrine were to be accepted every growing community would find it impossible to accept and encourage the service of carriers still to be created at reasonably convenient points within their respective boundaries, and thus many of the larger purposes of the act would be defeated.

"We think that a common carrier is bound to accept a car for transportation whenever such a car is offered in places where it can reasonably receive it. *To determine whether or not it will*

transport the car, the carrier cannot lawfully inquire into the ownership and origin of the contents, nor into the route over which it has been moved in order to reach its rails. It can only ask that it be given reasonable compensation for the service it performs."

We do not regard this case as affected by the case of *Morris Iron Co. vs. Baltimore & Ohio R. R. Co.*, 26 I. C. C., 240, decided at the same time. In this case the Interstate Commerce Commission had before it the application of the Morris Iron Company, an industry located on the Frederick Railroad. The Pennsylvania Railroad had a switch connection with the Frederick Railroad, but declined to interchange cars. The Baltimore & Ohio Railroad had no connection with the Frederick Railroad and refused to make one. The Interstate Commerce Commission said:

"It is almost universally true at the present day in all parts of the United States where conditions are similar to those at Frederick, that freight can be switched interchangeably to and from industries located upon the different lines upon the payment of some reasonable switching charge. The condition at Frederick is a relic of the time when railroads were administered by unenlightened selfishness. It is difficult to understand how two great systems like the Pennsylvania and the Baltimore & Ohio can knowingly compel the shippers of this community to rest under the burden which they now sustain."

The Commission then refers to the clause in Section 3 as follows:

"The third section of the Act to regulate commerce provides that no railroad shall be required to give the use of its tracks or terminal facilities to another carrier engaged in like business. The de-

fendants insist that under this provision of the statute we have no authority to require them to make delivery on their terminals of traffic which has reached the city of Frederick over the line of the Western Maryland and the Frederick Railroad, since they are engaged in like business with the Pennsylvania and the Baltimore & Ohio.

"The Commission has felt constrained in applying the Act to regulate commerce to observe the apparent inflexible requirement of this provision. To order these defendants to receive and switch cars which have been transported to Frederick over the lines of their rivals would apparently be to require them within the meaning of the act to open their terminals to their competitors, and this is forbidden. We are therefore obliged to hold in the present case that we have no authority to grant this reasonable request of the complainants.

"Let it be noted that this is not an application in any sense for the establishment of through routes and joint rates. If shippers upon the Frederick Railroad at points other than Frederick, or if that railroad itself were demanding the establishment of through routes and joint rates, and entirely different question would be presented, and that question is not here considered. The purpose of these complainants is simply to obtain access by a purely switching movement from their industries located upon the terminals of the Frederick Railroad to and from the Baltimore & Ohio and the Pennsylvania.

"Neither is this situation that of a terminal railroad which has been constructed mainly for the purpose of connecting main-line roads with one another and giving access by such lines to the industries of

a community. This again presents another question which is not passed upon.

"Nor is there here any question of discrimination between railroads or shippers.

"All we now decide is that these railroads cannot be required to open their terminals at Frederick to traffic brought to or carried from that locality by their competitors."

This case is strictly limited to the effect of the clause in Section 3 upon what is denominated a "purely switching movement." This purely switching movement, as we take it, is exactly identical with the intra-city movement which under the Michigan statute is now expressly authorized. If the Morris Iron Company had applied for through rates over the Frederick Railroad to its junction with the Pennsylvania Railroad under the plain indication in the opinion of the Commission those rates would have been established. So far, therefore, as all movements in "purely switching" service in and out of the city are concerned, the clause in the third section would not prevent the compelling of through rates. So far as the "purely switching movements" are concerned, the Michigan statutes now provide the authority for the action of the Commission.

It should be noted that the Interstate Commerce Commission is reluctant to give even this effect to the clause in question. It said in the Peoria case:

"What is the future of a community if a terminal company, that is in perfect control of the traffic situation there, as is this defendant at Peoria, may refuse to enter into traffic arrangements with carriers that are desirous of fully serving the community and using the lines entering it in the service of interstate commerce?"

But substantial authority is not wanting to the effect that a carrier can be compelled to perform the intra-city

switching service. Judge Shiras considered this precise question in *State of Iowa vs. Chicago, M. & S. P. Ry. Co.*, 33 Fed., 391.

In this case the State of Iowa had filed a bill to enforce an order of the State Board of Railroad Commissioners to compel the defendant carrier to switch the cars of other railroad companies over certain tracks in the city of Dubuque. The order compelled the defendant railroad, which had constructed sidings and tracks in that city, to deliver and switch over those sidings and tracks the cars of the two other roads that had built their lines to the city.

The case appears to have rested upon the theory that the defendant railroad was a common carrier and had laid its tracks in the city of Dubuque under an implied agreement that the tracks should remain open and public to the citizens of that city. Reference is made to the fact that the tracks were laid in the public streets. The decision rests as well upon the broader ground of the duty of the common carrier, and the court held that the defendant railroad should be compelled to receive and deliver traffic from the other roads over its sidings.

In discussing the effect of the last clause of Section 3 of the Interstate Commerce Act in reference to the use of the tracks and terminal facilities, the court said:

> "So, also, if the state of Iowa has provided by proper statute that different companies may have a joint or common use of certain terminal facilities, the rights of the several companies to such joint use are not affected by the provisions of the interstate commerce act."

We see no distinction in principle between the case where a carrier has laid its sidings upon the public highways with knowledge of their public use and the case where the

carrier lays its sidings and increases its facilities in the face of the statute that is designed to compel an interchange of traffic and intra-city switching.

V.

THE ORDER IS NOT IN CONFLICT WITH THE DOCTRINE OF THIS COURT IN

Louisville, etc., Ry. Co. vs. Stock Yards Co., 212 U. S., 132.

(A) THAT CASE DEALT WITH A CONSTITUTIONAL PROVISION PROVIDING FOR INTERCHANGE OF TRAFFIC BUT MAKING NO PROVISION FOR COMPENSATION.

(B) THAT CASE DEALT WITH THE DELIVERY OF LIVE STOCK AT STOCK YARDS, A SERVICE DISTINGUISHABLE FROM THAT IN QUESTION HERE.

But is it insisted that this Court, in the cases of *Central Stock Yards Company vs. Louisville etc. Railroad Company*, 192 U. S., 568, and *Louisville etc. Railroad Company vs. Stock Yards Company*, 212 U. S., 132, has determined this question and has held that interchange of traffic such as the Commission is attempting to enforce here cannot be compelled. These cases arose under the constitution and laws of the state of Kentucky. Both of them, as did the earlier case of the *Covington Stock Yards*, 139 U. S., 128, dealt with the delivery of live stock It is not impossible to find a clear distinction between the duty of a carrier in reference to the handling of live stock and its duty in reference to the handling and delivery of other freight. In each of these cases, the special duty of the carrier of live stock is noted. The transportation of live stock demands special facilities and its carriage always imposes on the railroad special liabilities. The stockyard of the railroad, therefore,

is distinguishable from the freight depots and from the team tracks. The receipt and delivery of live stock requires a particular facility which, from its character, cannot be installed to suit the loading and unloading conveniences of the shipper nor built except at a considerable expense beyond the mere building of the track facilities.

The special liability of the carrier of livestock is recognized in *N. Penn. R. R. vs. Commercial National Bank*, 123 U. S., 727, as follows:

> "A railroad company, it is true, is not a carrier of live stock with the same responsibilities which attend it as a carrier of goods. The nature of the property, the inherent difficulties of its safe transportation, and the necessity of furnishing to the animals food and water, light and air, and protecting them from injuring each other, impose duties in many respects widely different from those devolving upon a mere carrier of goods. The most scrupulous care in the performance of his duties will not always secure the carrier from loss. But notwithstanding this difference in duties and responsibilities, the railroad company, when it undertakes generally to carry such freight, becomes subject, under similar conditions, to the same obligations, so far as the delivery of the animals which are safely transported is concerned, as in the case of goods. They are to be delivered at the place of destination to the party designated to receive them if he presents himself, or can with reasonable efforts be found, or to his order. No obligation of the carrier, whether the freight consists of goods or of livestock, is more strictly enforced. *Forbes v. Boston & Lowell Railroad Co.*, 133 Mass., 154; *McEntee v. New Jersey Steamboat Co.*, 45 N. Y., 34.
>
> "If the consignee is absent from the place of des-

tination, or cannot, after reasonable inquiries, be found, and no one appears to represent him, the carrier may place the goods in a warehouse or store with a responsible person to be kept on account of and at the expense of the owner. He cannot release himself from responsibility, by abandoning the goods or turning them over to one not entitled to receive them. *Fisk v. Newton*, 1 Denio, 45. If the freight consist, as in this case, of live-stock, the carrier, will not, under the circumstances mentioned, that is, when the consignee is absent or cannot after reasonable inquiries be found, and no one appears to represent him, relieve himself from responsibility by turning the animals loose. He must place them in some suitable quarters where they can be properly fed and sheltered, under the charge of a competent person as his agent, or for account and at the expense of the owner. Turning them loose without a keeper or delivering them to one not entitled to receive them would equally constitute a breach of duty for which he could be held accountable. These principles are firmly established by the adjudged cases, and rest upon obvious grounds of justice." *Angell on Carriers*, p. 291.

Having in mind the extraordinary responsibility upon the carrier of live stock and its requirement of special station facilities, it is not surprising that the Court was reluctant to compel a carrier to accept live stock from another carrier who had brought the stock to the junction point to there deliver it to be switched to the stock yard of the first carrier.

In the *Covington Stockyard Case*, 139 U. S., 128, the carrier refused to receive at the Covington yard live stock billed to one Keith, except an extra charge was paid. The Covington yard was a private yard with which the railroad

had a contract covering the handling of live stock, and the railroad refused to establish a yard. Keith had a yard of his own but the carrier refused to deliver there. The Court held that as the Covington yard would not handle Keith's stock without charge and the railroad refused to establish a yard itself, it must deliver at Keith's yard. The Court said:

> "We must not be understood as holding that the railroad company, in this case, was under legal obligation to furnish, or cause to be furnished, suitable convenient appliances for receiving and delivering livestock at every point on its line in the city of Covington where persons engaged in buying, selling or shipping livestock, chose to establish stockyards. In respect to the mere loading and unloading of livestock, it is only required by the nature of its employment to furnish such facilities as are reasonably sufficient for the business at that city. So far as the records discloses, the yards maintained by the appellants are, for the purpose just stated, equal to all the needs, at that city, of shippers and consignees of livestock; and if the appellee had been permitted to use them, without extra charge for mere "yardage," they would have been without just ground of complaint in that regard; for it did not concern them whether the railroad company itself maintained stockyards, or employed another corporation to supply the facilities for receiving and delivering livestock it was under obligation to the public to furnish. But as the appellant did not accord to appellees the privileges they were entitled to from its principal, the carrier, and as the carrier did not offer to establish a stockyard of its own for shippers and consignees, the Court below did not err in requiring the railroad company and the receiver

> to receive and deliver stock from and to the appellees at their own stockyards in the immediate vicinity of appellant's yards, when the former were put in proper condition to be used for that purpose, under such reasonable regulation as the railroad company might establish."

The Court said in this (the Covington case) that the vital question was "whether the means and facilities so furnished by the carrier or by some one in its behalf are sufficient for the reasonable accommodation of the public."

In the *Central Stock Yards Case*, 192 U. S., 568, this same theory of the special duty of the carrier of livestock is emphasized. When this case was before the lower Court, 118 Fed., 113, Justice Day commented on the "peculiar duties of a common carrier of livestock," and in the opinion of the Supreme Court it is said "If the cattle are to be unloaded, then, as was said in the *Covington Stockyards Co. vs. Keith*, the defendant has a right to unload them where its appliances for unloading are."

> " * * * On the other hand, if the cattle are to remain in the defendant's cars, it cannot be required to hand those cars over to another railroad without contract. The Courts have no authority to dictate a contract to the defendant or to require it to make one. * * *"

There is no determination here that if the Act of Congress had contained a provision requiring through routing and the interchange of traffic, the Carrier would not have been compelled to permit the interchange which was desired even though they were delivering a special form of freight.

In *Louisville & N. Ry. Co. vs. Stockyards Co.*, 212 U. S., p. 132, the same controversy was before the Courts. In a proceeding in equity, prosecuted by the Central Stockyards Company which is on the Southern R. R. just outside of the

border of Louisville, it was attempted to compel the Louisville & Nashville Road to accept cars containing livestock at points on its lines outside of Kentucky, and deliver the cars containing such stock to the Southern Railroad Company for delivery to the Central Stockyards in Louisville. The Louisville & Nashville R. R. had established on its tracks its own stockyards, the Bourbon yards.

By the decree of the lower Court the Louisville & Nashville was ordered to accept and deliver freight originating at the Central Stockyards and destined to the Bourbon yards. Upon this phase of the decree the majority of the Court said:

> "There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all livestock consigned from the Central Stockyards to any one at the Bourbon yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed special liability but upon the broad

> ground that the state constitution requires it and lawfully may require it of a common carrier by rail. Therefore the judgment must be recovered."

It will be noted that the objection here is that the road delivering the cars to the Louisville & Nashville can require the switching service "upon simply paying for the service of carriage." Such is not the fact here.

Nothing could be clearer than that this case turned upon the fact that the provision in the constitution of Kentucky as to interchange provided no protection or compensation for the carrier so required to deliver its cars. Upon that fact alone rested the decision of the Court.

This case, as did the two preceding cases, arose before the amendment of the Interstate Commerce Act, providing for compulsory through routing and rating, and this case and the prior cases dealt with the movement of a particular form of freight.

It should also be noted that as the Court below said:

> "The action was also construed as an attempt to compel the railroad to deliver cars elsewhere than at its own terminals, while in the case before us delivery is attempted to be enforced only at places which the railroad holds are parts of its terminal facilities."

This is especially so in the Central Stock Yard case in 192 U. S., 568. There is a radical difference between the compulsion of delivery by a railroad of cars to points beyond its line where no through rates are in effect and the acceptance of cars at a junction where cars are destined to points on its line, where it has facilities for handling general traffic and facilities dedicated to use by the public as a part of the facilities it supplies to perform its duty as a common carrier.

The effect of the Stockyards cases were considered by the Supreme Court of the State of Indiana in a case involving a statute substantially similar to the one under consideration.

Chicago I. & L. R. R. vs. Railroad Commission, 95 N. E. Rep., 364.

This case arose originally on the complaint of certain shippers at Bloomington. They filed a petition against the Indianapolis & Southern Railway Co. and the C. I. & L. Ry. Co. praying that these roads be required to publish and file switching tariffs. On the hearing by the Commission the carriers were required to publish and file tariffs to apply to all commodities moving from the defendants interchange tracks to the several points of loading and unloading, both public and private team tracks.

The Indiana statutes provided that the Railroad Commission after a hearing could relieve any carrier from switching car load freight at terminal points to be delivered on its public team tracks "when it appears that the facilities of such carrier at such point are only sufficient to take care of the business originating and terminating on its line at such point." No application was made by the carriers under this provision in the statutes.

The carrier argued that the order violated its property rights because it required it to receive at Bloomington freight brought to that city on the Indianapolis & Southern to be delivered to industries located on public and private tracks. That it had a terminal at Bloomington and had a right to do business there and had a right to serve the industries located on its tracks and receive the earnings for such service. It relied on the case *Louisville etc. R. R. Co. v. Stock-Yards Company, supra.*

The Supreme Court of Indiana called attention to the

fact that the statutes of Indiana amply protected the carrier and particularly provided for compensation for the use of cars and for the switching service, saying that this "might include also an element of return on the capital invested in terminal facilities."

The question, however, of the application of the Stock Yards cases to the Michigan Act in so far as track connections and interchange of traffic are concerned has been before the Michigan Court in *Michigan Railroad Commission v. Michigan Central Railroad Company* (*supra*). The court said:

> "Does the order deprive respondent of its property without due process of law? For the affirmance of the proposition that it does, respondent relies upon *Central Stock Yards Co. v. Railway Co.*, 192 U. S., 568 (24 Sup. Ct. 339), and *Louisville, etc., R. Co. v. Stock Yards Co.*, 212 U. S., 132 (29 Sup. Ct. 246). In our opinion, the present case is distinguishable from, and not ruled by, the cases cited, for the reasons that the statute expressly imposes upon respondent an obligation to interchange cars, etc., and subdivision "c" of section 7 above quoted expressly provides for reasonable compensation.
>
> "We therefore hold the statute to be constitutional, and the writ will issue as prayed."

Such is the view adopted by the lower court and we submit that it is sustained by both principle and precedent.

VI.

SINCE A CARRIER CANNOT REFUSE TO INTERCHANGE TRAFFIC AT ITS TERMINALS WHEN REASONABLE COMPENSATION IS PAID THEREFOR, IT CANNOT CHOOSE THE CARRIER WITH WHOM IT WILL INTERCHANGE NOR PRESCRIBE THE TERMS AND CONDITIONS THEREOF. INADEQUATE TERMINALS DO NOT JUSTIFY THE REFUSAL OF TRAFFIC.

If a carrier cannot refuse to interchange with other carriers at its terminals, it cannot prescribe the terms upon which it will permit such interchange, nor can it permit it with one and refuse it to the other. The charges for its service must be reasonable and the charges for the service of the carrier to which it commits its cars must likewise be reasonable. When such reasonable charges have been imposed, the rights of both carriers have been protected.

Obviously, to grant that the carrier can select those with whom it will interchange in switching movements would make it possible for carriers to unite and monopolize any given terminal. The condition which is condemned in the St. Louis Terminal Case (*supra*) and in the Peoria Case (*supra*) would be confirmed and legalized. Any carrier not now having terminals in the city of Detroit could not enter that city except at an enormous and prohibitive expense. Traffic originating on the lines of other carriers than those now having terminals in Detroit, could not reach the team tracks in the city; and freight loaded upon team tracks within the city would be compelled to move not on a route designated by the shipper but upon a route dictated by the carriers who control the city's terminals.

VII.

THE VALUE AND EXTENT OF THE TERMINAL IN WHICH THE INTERCHANGE IS EFFECTED IS NOT IMPORTANT EXCEPT IN DETERMINING WHAT SHALL BE A REASONABLE COMPENSATION FOR THE SERVICE PERFORMED.

It being established that under the statute the carrier can be required to deliver and receive cars at junction points with other carriers within the limits of any city, the extent and value of its terminals in that city are of no importance except as they relate to the compensation to be

paid or to be exacted for the service which is so performed. The statute does not contemplate that the service should be required and no reasonable compensation paid therefor. The payment, as counsel suggests, p. 76, of a "mere switching or transportation charge" might be adequate, and the charge might be reasonable. The order of the Commission and the effect of the ruling by the court below is more than to compel a carrier to receive and deliver the cars of another carrier which has no terminal within any given city. It may extend to that but it likewise covers and contemplates the receipt and delivery of cars from carriers who themselves have extensive terminals within the same city, and who would themselves receive and deliver from the first carrier, cars for unloading upon their team tracks. A reciprocal switching is intended; a complete interchange of traffic that will stimulate commerce, encourage transportation, create values and enable all carriers who enter any given community to reap a substantial benefit. We submit again that no property is taken within the inhibition of the Fourteenth Amendment unless the compensation allowed therefor be inadequate and unreasonable, and the adequacy of the transportation charge to and from team tracks of the appellants is not before this tribunal. The appellants did not see fit to avail themselves of their remedy by appeal from the order of the Michigan Railroad Commission to determine whether or not the Commission had the authority to permanently suspend the original tariff prescribing an increased charge on certain services to team tracks. But, instead, they cancelled all tariffs to team tracks and declared that irrespective of the charge, they have the absolute right to refuse to perform the service to and from such tracks in connection with cars moving to and from other carriers.

VIII.

NOR IS THE ORDER VOID BECAUSE NEITHER IT NOR THE STATUTE PROVIDED "PROTECTION FOR DAMAGE TO CARS OR FOR LOSS OF TRAFFIC."

Neither can the carriers complain because the order did not provide "protection for the carrier turning over its cars to another carrier, either for damage to cars or for loss of state or interstate traffic." In the compensation to be fixed for the performance of this service and the delivery of these cars, a substantial element would undoubtedly be the protection of either carrier against loss or damage to cars and a compensation for the loss of other traffic. All this would be included in the charge prescribed for the use of the cars;—interest on the investment, rental values, cost of repairs, earning capacity. All these undoubtedly would affect the compensation.

Here again, the objection goes not to the right to compel the performance of the service, but only to the adequacy or inadequacy of the compensation.

IX.

THE ORDER IS NOT VOID AS IMPOSING "INTRA-CITY SWITCHING" UPON THE APPELLANT RAILROADS. THE APPELLANTS AS RAILROADS ARE INCORPORATED TO DO SWITCHING AND PERFORM A TERMINAL SERVICE.

The counsel for the appellants argues the question as if a distinction could be drawn between a railroad operating a line within the limits of a city, used only for delivery of freight or the switching of cars, and a railroad, "tracking the state through its length or its breadth." We have already shown that the statutes of Michigan do not provide for the incorporation of a belt line or a switching company and that the state gives no charter to a cor-

poration to perform those services alone. A corporation undertaking the services of a belt line or a switching company becomes responsible to the state as a railroad company and is in every way subject to all the disabilities of a railroad company and can avail itself of all its privileges. In cases where the terminal companies have attempted to exercise the right of eminent domain, it has been argued that because the length of their tracks was limited and they were constructed only to connect with other roads, they were not railroads. They have answered in these cases that they were railroads, subject to the laws governing railroads and entitled to their privileges.

As the court says in *Bridwell vs. Gate City Terminal Company, Ga.*, 56 Southeastern 624, 10 L. R. A. N. S. 909, a terminal company is a railroad company, and a railroad company under the statute of Michigan is incorporated to perform transportation services; transportation services involving the handling of freight to and from and in and through terminals.

The case *State ex. inf. vs. Terminal Railroad Association of St. Louis*, 182 Mo., 281, cited by appellants in an earnest argument in favor of complete interchange of traffic by means of an absolutely open terminal. If such a terminal line did not exist, the same argument will support a complete interchange of traffic between the different carriers to and in any given city. The inter-city switch and the terminal service must be performed and the carriers are under the duty to perform it as a part of transportation service.

The Supreme Court of Missouri in its opinion in this case used the following language (p. 299) and this language is quoted with approval in *U. S. vs. Railroad Terminal*, 224 U. S. 383.

"A more effectual means of keeping competition

up to the highest point between parallel or competing lines could not be devised. The destruction of the system would result in compelling the shipper to employ the railroad with which he has switch connection, or else cart his product to a distant part of the city, at a cost possibly as great as the railroad tariff.

St. Louis is a city of great magnitude in the extent of its area, its population, and its manufacturing and other business. A very large number of trunk-line railroads converge in this city. In the brief of one of the well-informed counsel in this case it is said that St. Louis is one of the largest railroad centers in the world. Suppose it were required of every railroad company to effect its entrance to the city as best it could and establish its own terminal facilities, we could have a large number of passenger stations, freight depots and switch yards scattered all over the vast area, and innumerable vehicles employed in hauling passengers and freight to and from those stations and depots. Or suppose it became necessary in the exigency of commerce that all incoming trains should reach a common focus, but every railroad company provide its own track; then not only would the expense of obtaining the necessary rights of way be so enormous as to amount to the exclusion of all but a few of the strongest roads, but, if it could be accomplished, the city would be cut to pieces with the many lines of railroad intersecting it in every direction, and thus the greatest agency of commerce would become the greatest burden."

This Court (Judge Lurton delivering the opinion), when this case was before it (224 U. S. 383, 405), took occasion to

comment upon the situation at St. Louis, which by the way bears an extraordinary resemblance, geographically at least, to that at Detroit, and referred to the testimony of an experienced railroad engineer. It expressed the opinion that terminals of railroad lines in any great city should be unified as far as possible and that such unification would be of the greatest possible utility and immeasurable advantage to commerce, both state and interstate.

> "The witness, however, points out that such a terminal company should be the agent of every company and furthermore that its service should not be for profit or gain."

The court in this case condemned the practices of the St. Louis terminal but justified the joint ownership of the property.

> "The mere combining of several independent terminal systems into one may not operate as a restraint upon interstate commerce."

If this be true of the terminal facilities of the various roads that enter a great city, how can it be possible that a single road can be justified in refusing to join in the unification of its terminals with others; and if a single road can decline to interchange cars, except at its option, how is a unification of the terminals in that city to be accomplished? There is but one answer, and that is that complete interchange of traffic in any terminal must be accomplished for the benefit of the public and each carrier must contribute its tracks subject to the condition of fair compensation.

a suspension. Yet this clause has not been successfully challenged as a violation of the 14th Amendment.

XI.

NEITHER THE ORDER COMPLAINED OF NOR THE STATUTE OF MICHIGAN UNDER WHICH THE ORDER IS MADE IMPOSE ANY BURDENS UPON INTERSTATE COMMERCE, NOR ARE THEY VOID BY REASON OF ANY CONFLICT WITH ANY PROVISIONS OF THE INTERSTATE COMMERCE ACT.

1. The complainants urge that the order of the Michigan Railroad Commission, by compelling the handling of cars from junction points in the so-called intra-city movement, or from point to point within the city would tend to congest terminals. That their terminals are sufficient only to accommodate the business originating and ending on their tracks. That thereby a congestion and delay in interstate traffic will be caused and interstate commerce will be delayed and interfered with. To substantiate this claim, ex parte affidavits are presented which recite that the enforcement of the order will overtax the capacity of the tracks of complainants, (See affidavit George W. Gulliford, Abstract of Record, p. 35.) and "that if said company should be required to receive said switching business on its said tracks, it will necessarily follow, and when such cars were received it did follow, as a result that interstate business was and will be greatly obstructed and delayed." (Abstract Rec., p. 27, affidavit Charles S. Cunningham.)

To these affidavits the appellee, Michigan Railroad Commission, opposed the affidavit of C. L. Glasgow, Chairman of Michigan Railroad Commission, (See Abstract of Record, p. 31) who deposes that he has investigated the conditions in the city of Detroit and is familiar with the effect of the requirements for the interchange of local traffic and the transportation of cars from junction

points and that such interchange of traffic "would not in any way tend to congest or impede traffic on the tracks of said railroad in the city of Detroit * * * * * * * and in no way affect interstate and intrastate business except to facilitate the same and to relieve congestion thereof on the tracks of the various railroads in the city of Detroit." He further says that this requirement in the interchange of traffic would not overtax the capacity of complainants' tracks in the future nor interfere with interstate traffic but would facilitate that traffic.

In the opinion of this court in *Louisville & Nashville R. R. Co. vs. Kentucky*, 183 U. S., 511, it is said that "for the federal court to interfere with the legislative department of the State government when acting within the scope of its admitted power, is always the exercise of a delicate power, one that should not be resorted to unless the reason for so doing is clear and unmistakable." The case in which this doctrine was announced dealt with rates of freight fixed by the State Railroad Commission. The lower court in the case at bar was unwilling, upon *ex parte* affidavits to enjoin the enforcement of the statute, and we submit that this court should not prevent the operation of any statute and any order of the Commission except upon clear showing that the actual operation thereof did interfere with interstate commerce.

That the claimed interference must appear in the actual operation of the statute; that it must be demonstrated by concrete cases is certain.

> *Atlantic Coast Line Ry. Co. vs. Commonwealth*, 102 Va., 599.

It is apparent that the order will not inevitably and by itself affect interstate commerce, since if abundant side tracks did exist, interstate commerce would be in no respect impeded. If the complainant were able by other develop-

ments of its terminal facilities to more expeditiously move its cars, again, interstate commerce would not be affected.

2. The order, however, is not in conflict with the clause in Section 3 of the Interstate Commerce Act providing that the carrier should not be required to give the use of its tracks or terminals to other carriers engaged in like business. We have already pointed out that the requirment that the shipper should be permitted to route his freight through the junctions in any city to a team track on the lines of a carrier that did not have the line haul of the car, and the compelling that the carrier on whose track the car is to be finally delivered must receive it at the connection for switching it to the team tracks, did not give to the other railroad the use of the tracks and terminals of the delivering carrier. Very clearly if this service were performed for a compensation there is no giving. But this movement of cars switched to and fro within the city terminal must be distinguished from the use of storage houses, engine houses, storage yards and general terminal facilities. And this order of the Michigan Commission does not violate the provision in the Interstate Commerce Act Commission any more than it does the similar provision in the Michigan statute.

But the last clause of section 3, Interstate Commerce Act, which we are discussing, is not a limitation upon the authority of the state to regulate intra-state traffic or to deal with the instrumentalities of interstate traffic any more than the previous provisions of that section of the Commerce Act are a limitation upon the legitimate power of the state. Judge Shiras declared this to be the rule in *State of Ia. vs. C. M. & St. P. R. R. Co.*, 33 Fed., 391, a case to which we have already called attention. It was urged by the defendant railroad that in requiring the cars of

ne carrier to be switched over the tracks of another car-
ier in Dubuque, interstate commerce was regulated, since
he cars were filled with property brought into Iowa from
ther states. The court declared that the tracks of the
efendant carriers in the city of Dubuque must have been
here laid to be public and open to the use of the citizens.

> "Certainly it cannot be said that upon the face of it it clearly appears that by imposing this duty upon the defendant company, and providing the reasonable compensation to be paid therefor, the state is interfering with or regulating commerce between the states. All that is sought to be done, is to fix the rate to be charged by the defendant company for certain work which it has assumed to do, not by reason of its character as a common carrier, but as a consideration which the company agreed to do and perform for the privilege of laying down the side tracks in question. The facts averred in the record do not certainly show that the question of interstate commerce is necessarily involved in the case."

It was then urged by the defendant that the action of the Commission was in contravention of the last clause of section 3 of the Interstate Commerce Act as to the use of tracks for terminal facilities, but the court declared:

> "The meaning of this clause is clear. It simply declares that the preceding provision of the section shall not be deemed to give the right to one carrier to use the tracks or terminal facilities of another carrier in the like business. It has reference to the effect of the act of congress, and nothing else. If the defendant company, by a contract with the city of Dubuque, has bound itself to allow other companies to use part of its tracks or terminal facilities, this clause of the act of congress does

not affect such a contract or the enforcement thereof. *So, also, if the state of Iowa has provided by proper statute that different companies may have a joint or common use of certain terminal facilities, the rights of the several companies to such joint use are not affected by the provisions of the interstate commerce act, but the same must be measured and determined by the statutes of the state.*"

We insist, therefore, that the clause in the federal act should not be construed as a limitation upon the power of the state. The order does not contravene an express regulation of the federal government as to local interchange of traffic of the character here in question.

3. The order of the Michigan Commission on its face is evidently intended to facilitate the movement of traffic. The purpose is quite plainly to compel the movement of cars to an ultimate destination as near as possible to the consignee thereof. It is intended to open all the instrumentalities of commerce in any given city to the use of any citizen whether located upon lines that possess such terminal facilities or upon other lines elsewhere in the country. Its evident purpose was to open those terminals to other carriers, providing proper compensation was paid to them, and its further purpose was to permit the citizens of the city to ship their cars to points beyond its limits, whether those points were upon the lines of the carrier upon whose siding such citizens loaded their cars, and whether or not the junction of the carrier whose tracks served the destination of the shipper were within or without the limits of the city where traffic originated.

The order, therefore, was intended to facilitate commerce and to compel carriers to perform transportation services for the benefit of the public which, as common

carriers, they should perform. The statute and order are, therefore, in aid of commerce; they tend to promote the safe and prompt delivery of goods. The order should be sustained as an order to compel the performance of a duty by a common carrier, which in the absence of the statute it should perform.

Atlantic R. R. Co. vs. Mazursky, 216 U. S., 122;
Western Union Telegraph Co. vs. Croco, 220 U. S., 364.

4. The order of the Michigan Railroad Commission is a valid regulation by the State which though it does concern tracks used both in state and interstate commerce does not directly affect such commerce and is therefore within the authority of the State.

There is no question but what the tracks to and from junctions with connecting railroads as well as the tracks of the appellants within the limits of any city are used for the transportation of interstate commerce, as well as for the transportation of state freight, but the fact that these tracks are so used by both state and interstate shipments does not remove them from the realm within which the state can act. The Interstate Commerce Act was not intended to remove entirely from the states the regulation of the instrumentalities of commerce and many legitimate fields for state action will remain.

The general principles of state authority have been recently and authoritatively discussed and laid down in the case of *Simpson, et al., vs. Shepard*, 33 U. S. S. C. R., 729—the so-called Minnesota Rate Case—and further discussion except by reference to that decision would be superfluous. The Court in that case did, however, say that "the legislation of states, safeguarding life and property and promoting comfort and convenience within its jurisdiction, may extend incidentally to the operations of the carrier in the

conduct of interstate business, provided it does not subject that business to unreasonable demands and is not opposed to federal legislation."

In discussing the power which remained to the state it continued:

> "Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although interstate commerce may incidentally and indirectly be involved."

We do not understand that it is seriously argued in this case that because side tracks and switching tracks might be instrumentalities of interstate commerce the state cannot make needful regulations in reference thereto if those regulations did not directly burden interstate commerce.

We adopt again the language of the Court in the Minnesota Rate Case:

> "Again, it is manifest that when the legislation of the state is limited to internal commerce to such a degree that it does not include even incidentally the subjects of interstate commerce, it is not rendered invalid because it may affect the latter commerce indirectly. In the intimacy of commercial relations, much that is done in the superintendence of local matters may have an indirect bearing upon interstate commerce. The development of local resources and the extension of local facilities may have a very important effect upon communities less favored and to an appreciable degree alter the course of trade. The freedom of local trade may stimulate interstate commerce, while restrictive measures within the —

police power of the state enacted exclusively with respect to internal business, as distinguished from interstate traffic, may in their reflex or indirect influence diminish the latter and reduce the volume of articles transported into or out of the state."

Unless this regulation of instrumentalities which may be used for interstate commerce directly affects the interstate traffic it is not void; and a burden on interstate commerce which is "merely conjectural, and at all events too remote and indirect to be an interference with interstate commerce" does not invalidate the regulation. "The interference with the commerce power must be direct and not a mere incidental effect of the requirement * * *." *New York, Lake Erie & Western Ry. Co. vs. Pennsylvania*, 158 U. S., 431.

Manifestly the possible congestion of interstate traffic and the delay of interstate cars will not be the direct result of this order. Unless the facilities are inadequate or cannot otherwise reasonably be supplied for this service no congestion and delay will result. And the record, however, exhibits no delay to interstate commerce in the actual railroad operation. The law itself has not created any delay, and the direct effect upon interstate commerce can only be discovered as the question arises in concrete cases. *Atlantic Coast Line Ry. Co. vs. Commonwealth, supra.*

Again it is uncertain whether any delay in delivery will affect interstate commerce. Deliveries at other tracks may be accomplished and so far as the transit of the interstate commerce is concerned there may be no burden whatever. The statute in fact now provides that if a congestion shall arise, a substituted delivery at other convenient tracks is possible.

But the argument of the appellants that this regulation by the state is a burden upon interstate commerce proceeds

on the theory that the appellent, Grand Trunk System, will only handle Grand Trunk cars; that is, cars from Grand Trunk shippers, both state and interstate, to its side tracks. We submit that if this be the result of setting aside this order interstate commerce will be effectually hindered since shippers will be denied the opportunity of shipping to or from the Grand Trunk tracks in Detroit if the line haul is performed by another carrier, or will be denied that right except at the whim of the appellants. If such be the case, there will be an absolute inhibition of interstate traffic, not merely a burden.

We repeat, therefore, that the order and service required is directed toward facilitating the movement of all cars, both state and interstate; that it is not in contravention of the provisions in the Interstate Commerce Act; that the provisions of that act in section 3 thereof as to requiring the use of tracks and terminals, is a limitation upon that act and was not intended to limit the power of the state. That switch tracks, switch connections and team tracks are instrumentalities of commerce generally and their proper regulation is within the realm of the state authority. That interstate commerce is not burdened here and this order therefore is a legitimate exercise of the valid and proper authority of the state.

XII.

THE ORDER DOES NOT REQUIRE A SERVICE WHICH OBSTRUCTS THE UNITED STATES MAILS AND NO SUCH OBSTRUCTION IN FACT OCCURS.

It is sufficient answer to the objection to the order of the Commission that it is bad because the services required by it interfere with, delay and embarrass the carriage of the mails, that no facts are presented that any such obstruction exists.

As was said in the discussion of the effect of the order in connection with interstate commerce, the statute and order themselves do not obstruct the mails. The result of their operation may not obstruct the mails. The switch tracks and connections may not serve to transport the mails and even if congestion may result, the main artery of the railroad may still freely carry the Government freight. The affidavits of the Commission declared that no complaints had been made that the mail was delayed and no action had been taken by the Government to forestall any such interference.

The power of the Federal Government over post roads and postal facilities is plenary. It has been exerted but rarely, and then with reluctance, to remove obstructions to the mail service. The Criminal Statutes have been sufficient to prevent abuses.

In re *Debs*, 158 U. S., 564.

That Government will undoubtedly hesitate to declare an order of a State Commission void for interference with this branch of federal activity when the question is one of fact presented on a motion for an interlocutory injunction.

The Federal Government has however committed to the railroads the carriage of the mails. It was well aware of the powers still remaining in the state to regulate these carriers. It has never exacted any exemption from state regulation for any railroad that has contracted with it to perform this service. It, like any other shipper, will undoubtedly be better served if complete interchange of traffic be compelled and mails can enter any city over any road sure of delivery over any connection to the office of the government there located.

XIII.

THE MICHIGAN RAILROAD COMMISSION ACT DOES NOT IMPOSE ENORMOUS FINES AND PENALTIES AND IS NOT UNCONSTITUTIONAL WITHIN THE RULE OF "EX PARTE YOUNG."

The Michigan Railroad Commission Act has been in effect since 1907. Its constitutionality has been before the courts and the Act has been sustained. The penalties in the Act are not different or greater than those in many other states where acts of a similar nature have been sustained by the courts, or at least acquiesced in, by the carriers and the public.

The penalties prescribed in Section 43 are substantially less than those to which the court called attention in *Ex parte Young*, 209 U. S., 123. The penalties for the violation of the Michigan statute under Section 43 are a fine of not to exceed $500 and imprisonment of not to exceed three months, or both such fine and imprisonment. The penalties imposed in the Minnesota statute referred to in *Ex parte Young* were a fine of not more than $5000 or not less than $2500 for the first offense and an increasing fine for every subsequent offense, and imprisonment for a period of not to exceed five years, or both such fine and imprisonment. It can hardly be said that the penalties under the Michigan act would justify a contention such as was sustained in *Ex parte Young*. But, as was suggested by the court below, the penalties are in a section which is separable from the provisions in the statute involved in this case and there is no action here for the recovery of such penalties. The constitutionality of the penalty clause should be left to such an action for determination.

CONCLUSION.

We respectfully submit that the order of the Michigan Railroad Commission, the effect of the enforcement of which would be to compel the appellants to perform the so-called intra-city delivery or switching service, was made in pursuance of the constitutional right of the state to regulate the instrumentalities of commerce to facilitate the local delivery of freight. The statute under which the order was made amply protected the constitutional right of the carriers. The service which the order was designed to enforce was a service which will facilitate commerce, not impede it, and a service which is an inseparable part of the transportation service which each common carrier must perform. To deny the right to the state to compel the movement and delivery of cars to and from team tracks and junction points with other carriers within the city, would be to impede commerce, prevent the interchange of traffic, nullify the recognized rights of a shipper to route his freight and permit effective combination by carriers to control for their own aggrandizement the cities and towns over which their tracks are now spread. The goal towards which the law should strive is the perfect interchange of all traffic over every track, the expeditious movement of every car, regardless of the ownership, from the point most convenient to the shipper to the point most convenient to the consignee, upon the sole condition of the payment of reasonable charges.

The order of the Michigan Railroad Commission tends to develop this free interchange of traffic; it is in accord with intelligent railroad practice in substantially every terminal of the land; it should be encouraged as a valid and wise exercise of the legitimate power of the state.

Respectfully submitted,

HAL. H. SMITH,

Solicitor for Appellees.

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Office Supreme Court, U. S.
FILED.
OCT 23 1913
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

No. 282.

GRAND TRUNK RAILWAY COMPANY OF CANADA AND DETROIT, GRAND HAVEN AND MILWAUKEE RAILWAY COMPANY,

Appellants,

vs.

MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON, AND FRANZ C. KUHN, ATTORNEY GENERAL OF THE STATE OF MICHIGAN.

Defendants and Appellees.

October Term, 1913.

No. 282.

Brief for Defendants and Appellees.

GRANT FELLOWS,
Attorney General.

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Supreme Court of the United States

GRAND TRUNK RAILWAY COMPANY OF CANADA, A CORPORATION, *Complainant*, vs. MICHIGAN RAILROAD COMMISSION, CASSIUS L. GLASGOW, LAWTON T. HEMANS, GEORGE W. DICKINSON, AND FRANZ C. KUHN, *Defendants*.	October Term, 1913. No. 853.

Brief for Defendants and Appellees.

STATEMENT OF FACTS.

This case arose originally out of a complaint filed by one John S. Haggerty, a brick manufacturer, located within the so-called switching district of the City of Detroit, against the Michigan Central Railroad Company and the Grand Trunk Railway Company before the Michigan Railroad Commission.

Mr. Haggerty's plant is located on the Pere Marquette Railroad in the City of Detroit. The so-called switching district of the City of Detroit lies along the Detroit river for a distance of about 22 miles, and embraces an area of approximately 100 square miles with a population of upwards of 500,000 people. To supply his trade in other sections of the city, it is necessary for Mr. Haggerty to ship carload freight over the various railroad lines doing business in the City of Detroit, among which lines are the lines of the Grand Trunk System. Mr. Haggerty, in his case before the Commission complained of discrimination by the Michigan Central and Grand Trunk Railroad Companies in favor of his competitors located on the lines of these other roads. The discrimination complained of may be illustrated in the following manner, taking the Michigan Central Railroad as an example:

The Pere Marquette, on which Mr. Haggerty's plant is located, takes a car from Mr. Haggerty's siding and carries it to Delray, a junction point of the Pere Marquette and Michigan Central, making a charge of $3.00, and delivers it at Delray to the Michigan Central. The Michigan Central takes the car at that point and carries it to one of its public team tracks to which it is billed, making a charge of $4.00. It then makes an additional charge of $3.00 for what is termed a team track delivery, or a total charge of $7.00 for taking the car from the junction with the Pere Marquette and placing it upon one of its team tracks for unloading. The same switching charge of $4.00 is made to Mr. Haggerty's competitors whose plants are on the tracks of the Michigan Central, but the team track charge, so-called, is reduced to $1.00, making a total of $5.00 as against the charge of $7.00 to Mr. Haggerty. This made a discrimination against Mr. Haggerty of $2.00 per car on every carload of brick delivered from the team tracks of the Michigan Central Railroad. The same general situation was true of the Grand Trunk Railroad.

Mr. Haggerty complained of this discrimination, filing his complaint before the Michigan Railroad Commission against

the Michigan Central Railroad and the Grand Trunk Railroad. A hearing was had before the Commission, and on February 6, 1912, the Commission made an order directed against the Grand Trunk Western Railroad Company requiring it to file and make effective a tariff removing the alleged discrimination and to: "publish and make effective like charges for the movement of a carload shipment received from an industry in the City of Detroit, upon said Grand Trunk Western Railway, consigned for delivery upon a team track or other siding of said road, within the same city, and for a like shipment received by said Grand Trunk Western Railway Company from a connecting carrier at a junction point within the corporate limits of the City of Detroit, consigned to team tracks or other siding upon said road, within the same city."

After the making of this order, the Grand Trunk Railway System appears to have published a new tariff entitled, "Supplement No. 4 to M. R. C. No. 236." This tariff removed the discrimination of which Mr. Haggerty had complained by raising the lower rates that had been charged to persons located on its own lines and making them the same as the rates that it had made persons like Mr. Haggerty not located on its lines.

Mr. Haggerty thereafter filed a supplemental complaint with the Railroad Commission alleging that this new tariff was unreasonable and exorbitant. Thereupon the Railroad Commission, on March 15th, 1912, by an order directed to the Grand Trunk Western Railway Company suspended the operation of this new tariff until April 29th, 1912, in order that it might investigate its reasonableness.

Pursuant to this order of the Railroad Commission, the Grand Trunk System appears to have issued its tariff dated March 26, 1912, and entitled "Supplement No. 5 to M. R. C. No. 236." This tariff suspended the former tariff entitled "Supplement No. 4 to M. R. C. No. 236."

On March 30, 1912 the Grand Trunk Railway System published a tariff entitled "Supplement No. 6 to M. R. C. No.

236," under the terms of which all rates between industries having private sidings on the Grand Trunk Railway System and hold or team tracks on that system, and all other hold or team tracks on that system, and all rates between junction points of all other carriers and the team tracks of the Grand Trunk Railway System in the so-called switching limits of the City of Detroit were cancelled, and the team tracks of the Grand Trunk System were withdrawn from intra-state and intra-city switching movements.

This last mentioned tariff was suspended April 10, 1912 by an order of the Michigan Railroad Commission directed to the Grand Trunk Railway Company.

It appears that the complaint and supplemental complaint of John S. Haggerty and the orders of the Railroad Commission made thereon and dated respectively February 6, and March 15, 1912, were all directed to the Grand Trunk Western Railway Company. It also appears that the Grand Trunk Western Railway Company does not enter the City of Detroit and does not own or operate any of the tracks involved by these two orders of the Commission. These facts becoming known to the Commission, it did on the 14th day of May, 1912 cancel its orders of February 6, and March 15, 1912, against the Grand Trunk Western Railway Company. The only order of the Commission therefore, which now remains in force is its order of April 10th, 1912, suspending the tariff of the Grand Trunk Railway System entitled "Supplement No. 6 to M. R. C. No. 236," which tariff withdrew the team tracks of the Grand Trunk Railway System in the City of Detroit from intra-city and intra-state transportation or switching movements.

The question involved in this case then, and the only question involved, is whether or not, under the statutes of the State of Michigan, complainant can be compelled to use the tracks it claims to own and operate in the City of Detroit for the interchange of intra-state traffic without a violation of the federal constitution.

As appears from the bill of complaint, it is the claim of the

complainant. The Grand Trunk Railway Company of Canada, a corporation organized and existing under the Laws of the Dominion of Canada, that it owns and operates the so-called terminal facilities of the Grand Trunk Railway System in the City of Detroit; that the tariff entitled "Supplement No. 6 to M. R. C. No. 236," while issued in form by the "Grand Trunk Railway System," was actually issued by and is operative over the properties of the Grand Trunk Railway Company of Canada; that the Grand Trunk Railway Company of Canada had a right to issue said tariff because its team tracks are its private property and it is not required to allow the use of such tracks to other carriers; that the said order of the Railroad Commission of April 10, 1912, suspending its said tariff, affects its property and is illegal and unlawful because the Laws of the State of Michigan requiring it to make interchange of traffic over its so-called terminals and team tracks are unconstitutional in that they deprive complainant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

It is the contention of the defendants in this case that, under the laws of the State of Michigan, complainant is required to accept for transportation at reasonable rates all intra-state carload shipments locally consigned between points in the same city or town and all intra-state carload shipments received from any junction point or transfer point or intersection with any other railroad in such city or town, and any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and to deliver such cars upon such team tracks or sidings in the city or town where such cars are received from such connecting line, when required so to do; and that the laws requiring such interchange of traffic do not deprive complainant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT.

I.

The Laws of the State of Michigan require Complainant to make this interchange of traffic.

In 1909 the Legislature of the State of Michigan passed an act known as Act No. 300 of the Public Acts of the State of Michigan for 1909, regulating the receiving, transportation and delivery of persons and property by common carriers and creating the Michigan Railroad Commission. Subdivisions "a" and "c" of section 7 of Act No. 300 of the Public Acts of 1909 read as follows:

> (a) "All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: Provided, Precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line

as may be directed and required by such shipper. When freight is shipped in intra-state commerce and any person or officer or agent of any corporation or company who shall deliver property for transportation does not prescribe over what connecting line such property shall be transported, it shall be the duty of the initial carrier to so route the freight as to give the property the benefit of the lowest rate published between points of origin and destination;

(c) "Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised."

In 1911 Act No. 300 was amended by Act No. 139 of the Public Acts of the State of Michigan for 1911, section 7 being amended by the addition of a new subdivision, Subdivision "d" which reads as follows:

(d) "Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the

delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: Provided, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

In the hearing before the Commission in the Haggerty matter, it was claimed that the clause of subdivision "a" which provides that:

> "Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business,"

is a limitation upon subdivision "d", as well as upon the remainder of the act, and that the interchange of cars required by subdivision "d" or any other part of the act would compel it to give the use of its tracks or terminal facilities to other railroads in violation of such limitation.

It is the contention of the defendants:

First, That a full compliance with subdivision "d" is in no way incompatible with the limitation contained in subdivision "a"; and

Second, That if there is any incompatibility and if the two clauses are inconsistent, the limitation in subdivision "a" was repealed and nullified by the subsequent enactment of subdivision "d."

A.

The clause of subdivision "a" relative to the use by one carrier of the tracks or terminal facilities of another does not nullify subdivision "d" or subdivision "a" in so far as subdivisions "d" and "a" require interchange of traffic.

When is one road giving "the use of its tracks or terminal facilities" to another, within the meaning of this act, is the question here presented.

This limitation as to the use by one carrier of the tracks or terminal facilities of another is also found in the Interstate Commerce Act, and it will be contended that the construction placed upon that act by the federal courts is important in construing the statute of the State of Michigan.

At common law a railroad or other common carrier was not bound to carry except on its own line and in its own cars, and if a railroad company entered into special contract relations with one connecting carrier for a continuous through route, it was not on that account bound to join in similar through routes or to allow the same facilities to another railroad having a physical connection with its tracks.

> Atchison, etc., R. R. Co. v. Denver, etc., R. R. Co., 110 U. S. 667.

It seems that the Interstate Commerce Act as originally enacted did not effect a change of the common law rule in this respect. After the passage of the act, the Commission and the federal courts held that it did not require a carrier to enter into through routing and through rates with a connecting carrier, or having effected a through route with one connecting carrier, it did not require the carrier to effect through routes with other connecting lines.

> Little Rock & M. R. Co. v. St. Louis, etc., Ry. Co., 63 Fed. 775, affirming 59 Fed. 400;
> Kentucky & Ind. Bridge Co., v. Louisville & N. R. Co., 37 Fed. 567, reversing 2 I. C. C. Rpts., 162;

Little Rock & M. R. Co. v. East Tennessee R. Co., 47 Fed. 771;
Little Rock & M. R. Co. v. St. Louis, etc., Ry. Co., 41 Fed. 559;
Mattingly v. Penna., 3 I. C. C. Repts. 592;
Kentucky R. R. Com. v. L. & N. R. Co., 10 I. C. C. Repts., 173, 187, 189;
Oregon Short Line, etc., Ry. Co. v. Mo. Pacific Ry. Co., 51 Fed. 465, 61 Fed. 158;
Railroad Co. v. Osborn, 52 Fed. 915;
St. Louis Drayage Co. v. Railway Co., 65 Fed. 39;
So. Pac. R. R. Co. v. Interstate Commerce Commission, 200 U. S. 536, 556;
Railroad Co. v. Steamship Co., 86 Fed. 407;
Central Stock Yards v. Louisville R. R. Co., 118 Fed. 113, 192 U. S. 568.

In Little Rock & M. R. Co. v. St. Louis, etc., R. R. Co., 63 Fed. 775, 778, 781, the Circuit Court of Appeals, in speaking of the power of the Commission under the act to compel through routing agreements, uses the following language:

> "Moreover, the direction 'to afford equal facilities for an interchange of traffic', is controlled and limited by the provision that this clause 'shall not be construed as requiring a carrier to give the use of its tracks or terminal facilities to another carrier.' Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. 571; Oregon Short Line & U. N. Ry. Co. v. Northern Pac. R. Co., 51 Fed. 465, 473. In the second place, it has been held that neither by the common law nor by the interstate commerce law have the national courts been vested with jurisdiction to compel interstate carriers to enter into arrangements or agreements with each other for the through billing of freight, and for joint through rates. Agreements of this nature, it is said, under existing laws, depend upon the voluntary action of the parties, and cannot be enforced by judicial proceedings without additional legislation. Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co., 3 Interst. Commerce Com. R. 1, 16, 17; Little Rock & M. R. Co. v. St. Louis, I. M. & S. Ry. Co., 41 Fed. 559, and cases there cited by Judge Cald-

well. Furthermore, it has been ruled by Mr. Justice Field in the case of the Oregon Short Line & U. N. Ry. Co. v. Northern Pac. R. Co., 51 Fed. 465, 474, that the third section of the interstate commerce act does not require an interstate carrier to receive freight in the cars in which it is tendered by a connecting carrier, and to transport it in such cars, paying a mileage rate thereon, when it has cars of its own that are available for the service, and the freight will not be injured by transfer."

* * * * * * * *

"Furthermore, it is the settled construction of the act, as we have before remarked, that it does not make it obligatory upon connecting carriers to enter into traffic arrangements for through billing and rating either as to passenger or freight traffic. This conclusion has been reached by all of the tribunals who have had occasion to consider the subject, and it is based on the fact that, in enacting the commerce act, congress did not see fit to adopt that provision of the English railway and canal traffic act, passed in 1873, which expressly empowered the English commissioners to compel connecting carriers to put in force arrangements for through billing and through rating when they deemed it to the interest of the public that such arrangements should be made. Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co., 13 Interst. Commerce Com. R. 1, 9, 10; Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. 567, 630, 631. See also the second annual report of the interstate commerce commission (2 Interst. Commerce Com. R. 510, 511). In the light of these adjudications, we are compelled to conclude that if the charge of an unreasonable discrimination cannot be successfully predicated on the ground that a railway company makes an arrangement with one connecting carrier for the use of its tracks and terminals, which it refuses to make with another, although the physical facilities for an interchange of traffic are the same, then the charge of discrimination cannot be predicated on the ground that it makes an arrangement for through billing and rating with one carrier, and does not make it with another. The interstate commerce act does not, it seems, at present, make it obligatory on carriers to make

arrangements of either sort, and does not give the commission power to compel such arrangements, but leaves connecting carriers, as at common law, to determine for themselves when such arrangements are desirable, and when undesirable. Moreover, arrangements for through billing and rating will, as a general rule, necessarily involve an agreement for the use, to some extent, of each other's terminals and tracks; and, by the express language of the statute, such use cannot be enforced without the consent of the owner."

In 1906 the interstate commerce act was amended by the passage of the so-called Hepburn amendment. This amendment makes it the duty of carriers under the act to "establish through routes and joint and reasonable through rates applicable thereto," and gives the Commission power to establish through routes and maximum joint rates and to prescribe the division thereof among the carriers, provided no reasonable or satisfactory route exists. (Sec. 15 of the interstate commerce act prior to amendment of 1910.)

Prior to the Hepburn amendment of 1906, it was held that the Commission had no power under the act to compel carriers to enter into through routes and rates, and one line of reasoning on which connecting carriers were denied equal facilities with other carriers was that the establishment of a through route necessarily required the use of the tracks and terminal facilities of one road by another, and such through routes could not therefore be required because of the limitation as to the use of tracks or terminal facilities. Thus, in Little Rock & M. R. Co. v. St. Louis, etc., R. R. Co., 59 Fed. 400, 408, the District Court of the United States gives the following reasons for denying equal facilities for interchange of traffic to connecting carriers:

"Prior to the enactment of the interstate commerce act, it would hardly have been contended that a connecting railway company would have had a remedy in equity, to compel the company with which the connection was made to accept freight in the cars of other com-

panies than its own, and transport the same to a point of destination on its line, or that a remedy at law, for damages for such refusal, existed. It seems to me that to allow the plaintiff company to load one or more of its cars at Memphis, Tenn., with freight to Ft. Smith, Ark., bring it to Little Rock, and compel the Little Rock & Ft. Smith Railway to transport the cars to Ft. Smith, without any agreement as to rates, and without the Little Rock & Ft. Smith Railway having any privilege to haul the freight in its own cars, would be giving the plaintiff the absolute use of the tracks of the defendant, to enable the plaintiff to carry on an interstate commerce business. The 'use of the tracks' of a common carrier for such a purpose is denied, in express terms, by the concluding clause of section 3 of the act. If it may thus tender cars of freight for transportation, it is difficult to see why the locomotive and tender should be detached from such cars. If a court of equity, by mandatory process, has the power to compel the receiving company to accept and transport interstate commerce freight in other cars than its own, it has the same right to say that such cars shall, if it will facilitate the business of delivery, be transported to the point of destination with and by the same motive power that brought them to the connecting road. The running of freight cars over the track of another railroad, without its consent is just as much 'use of the tracks' as if the locomotive were attached."

The Hepburn amendment of 1906, providing for compulsory through routing, did not change the concluding clause of section 3 of the interstate commerce act, the clause relative to the use of tracks or terminal facilities. Yet, since the passage of that amendment, a different construction has been placed upon that clause, and the requirement of compulsory through routing and through rates has not been considered as compelling the use of a carrier's tracks or terminal facilities.

Cardiff Coal Co. v. R. R. Co., 13 ICC. Repts. 465.

Drinker, in his comprehensive treatise on the Interstate

Commerce Act, in speaking of the decisions above mentioned which were rendered prior to the Hepburn amendment of 1906, and some of which construed the "use of tracks or terminal facilities" clause as not permitting compulsory through routing, says:

> "In certain of the decisions above cited, the refusal by the Court to entertain complaints of denial of equal facilities to connecting lines, or of discrimination in through routing agreements, has been based on the ground that the relief asked would necessitate the defendant's giving to the complaining carrier the use of its tracks and terminal facilities, in violation of the proviso in section 3. This conclusion, it is submitted, does not necessarily follow. Under through routing arrangements, connection carriers do not acquire the use of one another's tracks or terminals. When a car loaded by and belonging to a connecting line is received at the junction point and taken on without trans-shipment of the freight, this cannot reasonably be said to constitute a use by the initial road of the tracks of the forwarding line. Undoubtedly, by virtue of the proviso, a carrier might properly allow one connecting line trackage rights over its road, while refusing such to others, or might rent or lease to one a portion of its terminal, without being obliged to let in all other roads on the same terms, but this is a very different matter from the mere honoring of through tickets and bills of lading, or the receipt and forwarding of freight at junction points without requiring trans-shipment, or the acceptance of divisions of through rates less than the established locals. None of the latter privileges would seem in any reasonable sense to necessitate the use of the tracks or terminal facilities of the forwarding line." (Drinker on Interstate Commerce Act, vol. 1, sec. 224, page 332.)

It is our contention that, under the terms of the Michigan statute, the requirement that one carrier shall accept for transportation local carload traffic originating at one point in a city and consigned to another point in the same city or offered to the delivering carrier at a junction point in said

city, does not require the use of the tracks or terminal facilities of one carrier by another. The service thus required of a carrier is essentially a transportation service; it is not a mere switching service and therefore does not as such constitute the use of another carrier's terminal facilities.

The Supreme Court of the United States in Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 203, has said that "Transportation implies the taking of persons or property at some point and putting them down at another," and the Supreme Court of Georgia in Dixon v. Georgia R. R. Co., 110 Ga. 173, 35 S. E. 369, 371, has pointed out the same distinction between transportation and switching movements in the following language found in the syllabus of the Court:

> "The test of distinction between 'transportation' service, relatively to loaded freight cars, for which a railway company can lawfuly charge tonnage rates, and 'switching' or 'transfer' service, for which it is restricted to a fixed charge per car, is not whether the movement of the cars involves the use of a portion of the company's main line or that of another; for there may be a transportation service over one or more spur tracks of the same company, if the contract of affreightment requires no movement over other tracks or lines of railway, whereas a switching or transfer service is one which precedes or follows a transportation service, and applies only to a shipment on which legal freight charges have already been earned or are to be earned."

The Railroad Commission of the State of Ohio in the case of Akron Gravel and Sand Co. v. Baltimore & Ohio R. R. Co., decided June 2, 1911, has held that the delivery of carload freight from the public team tracks of one railroad company to the public team tracks of another railroad company within the switching district of the city of Akron is transportation and not switching. The following excerpts from the opinion of the Commission show clearly the distinction sought to be drawn:

"Municipal lines have no relation to switching limits, nor have switching limits any relation to transportation movements."

* * * * * * * *

"A transportation service is that which involves two terminal services, the placing of a car for loading at the point of origin, and for unloading at the point of destination. There are many tariffs denominated switching tariffs which carry rates where two terminal services are rendered, but the language is wrong. These rates are not switching rates."

* * * * * * * *

"Suppose for instance, two lines intersect and interchange in a village, and there be an industry located on one line two miles from the intersection and outside the village limits, and there be a siding on the other line two miles from the intersection and outside the village limits, would not the industry be entitled to a carload rate to such siding? What would happen if the village became a city and extended its corporation line so as to take in both these points? Would that geographical change in the municipal territory affect the common carrier duties of the roads performing the service?"

* * * * * * * *

"So far as carload freight is concerned, very many plants have sidings distant from the station building, and freight loaded on such sidings is billed from the station regardless of municipal lines. Suppose there be two stations within a municipality, one on the east and the other on the west boundary ten miles apart, and there be a siding just east of one of these stations, and another just west of the other station, can it be held that a shipper cannot load on one siding and ship to the other? Certainly not. The rate shown in the tariff as applicable between the two stations would apply between the two sidings. The word 'station' merely indicated the location of the billing agent."

It will be seen from the foregoing that any movement of a car which involves; first, the placing of a car for loading; second, the movement of a car from one point to another;

and third, the placing of the car for unloading, contitutes transportation as contra-distinguished from switching, and this though the car is handled wholly within a switching district. Whenever these three elements are involved in the moving of a car, such movement is a transportation movement and the common carrier is bound by all the rules governing transportation. The movement of freight which involves the loading of a car upon one private siding or public team track for delivery upon another private siding or team track of the same or another carrier is a transportation movement. If a car is loaded, moved and unloaded all within a so-called switching district like that of Detroit, the service is a transportation and not a switching service. Detroit has a population of over 500,000 people. To take care of the business coming into this territory from the outside, as well as local business between the various parts of the city, numerous substations, private sidings and public team tracks have been established. These facilities have been referred to as terminal facilities, but in so far as local traffic within the switching district of the City of Detroit is concerned, they are not terminal or switching facilities any more than depots, sidetracks and main lines are terminal facilities in a less densely populated district. The movement of freight from a private siding or a public team track to another private siding or public team track upon the same or upon connecting lines within the same so-called switching district is exactly the same kind of service as that rendered by a railroad company in moving a carload of freight from one station to another upon its own line, or to a station upon a connecting line, and the use of a carrier's tracks or terminal facilities is no more involved in one case than in another.

Since the passage of the Hepburn amendment in 1906 to the Interstate Commerce Act, under which the commission is authorized to compel through routing and through rates, it has rarely been contended that by compelling such through routing the limitation contained in section 3 of the act, the "use of track or terminal facilities" clause, is violated. Such compulsory through routing is not considered and has been

held as not requiring one carrier to permit the use of its tracks or terminal facilities by another.

Cardiff Coal Co. v. R. R. Co., 13 ICC. Repts. 465.

If, under the interstate commerce act, compulsory through routing does not constitute the use by one carrier of another's tracks or terminal facilities, then by a parity of reasoning a state law compelling similar interchange and through routing of local traffic, originating at one point in a city and consigned to another point, does not constitute the use by one carrier of another's tracks or terminal facilities. The side or team tracks of a railroad company entering a large city like Detroit are in no way distinguishable from the small stations along its own line or that of a connecting carrier. For the purposes of local transportation they are in effect stations to and from which carload traffic may be consigned, and when used for such purposes, its side and team tracks cannot be considered as terminal facilities; they must be considered as its main and branch lines are considered because they are used for transportation purposes in identically the same manner.

As far as local traffic is concerned, these side or team tracks are essentially a part of the carrier's line and to compel a carrier to make this interchange of traffic is merely compelling it to enter into "through routing" to and between local points in the City of Detroit. It is not compelling such carrier to give the use of its terminal facilities to another road. The reasoning of the Interstate Commerce Commission in Cardiff Coal Co. v. R. R. Co., 13 ICC. 468, applies with equal force in this case. In that case it was urged that, by compelling through routing, one carrier was required to give to another the use of its tracks and terminal facilities. The Commission in disposing of this contention says:

> "Neither the Chicago, Indiana & Southern nor the Wabash is a competing line with the St. Paul in the territory in question; they are simply connecting lines. And one of them is a necessary link in the through

routes demanded by the complainant to the territory in question. But from no point of view can it be said that this proceeding is an effort on the part of either of those lines to acquire the use of the terminal facilities of the St. Paul. It is simply an effort on the part of the complainant to reach those interstate points with its coal. And as we understand the matter the terminals of railroad companies are constructed for no other purpose than to serve shippers, and shippers ordinarily have the right to use them for all legitimate purposes."

As far as the local traffic required of complainant in this case is concerned, the lines in the City of Detroit are not competing lines. They are simply connecting lines. And to compel an interchange of carload traffic between local points in the City of Detroit is merely to compel through routing between such local points.

The interstate commerce act, when compared with the Michigan Railroad Commission act, will be found very narrow in scope and very limited in its operation as regards the requirement of mutual interchange of traffic. Even with the Hepburn amendment of 1906, providing for compulsory through routing, the act authorizes the Commission to compel through routing and through rates only where a satisfactory through route does not already exist. Notwithstanding the very limited power thus conferred upon the Commission, it has nevertheless gone so far as to hold that a city which embraces a wide area within its limits, may, because of physical or business conditions, comprise more than one shipping community to and from which through routes should be established, and that the compulsory establishment of more than one such shipping point to which through routes should be made does not compel the use of one carrier's terminals by another.

Enterprise Fuel Co. v. Penna. R. R. Co., 16 Interstate Commerce Commission Reports, 219.

The City of Detroit contains many shipping points. The so-called terminal facilities claimed to be owned and operated

by complainant contain many shipping points, and the acceptance of carload freight consigned to or from any of these shipping points under the statutes of the State of Michigan does not constitute the use of its tracks or terminal facilities by another carrier.

The Supreme Court of Michigan has itself placed this construction upon the Michigan statute as it stood prior to the amendment of 1911, and has held that compelling physical connection and interchange of traffic does not compel the use of a carrier's tracks or terminal facilities. In Michigan Railroad Commission v. Michigan Central Railroad Company, (Nov. 3, 1911), 168 Mich. 230, subdivision "b" of section 7 of the Michigan statute which requires interchange of cars between connecting carriers was sustained. It was contended by the railroad company that subdivision "b" was invalid for a number of reasons, one of which was that to compel interchange of traffic by connecting carriers was to compel the use of each other's tracks and terminal facilities in violation of the limitation contained in subdivision "a." The court in its opinion does not discuss this objection, but in upholding subdivision "b," which requires interchange of traffic, the court necessarily holds that such interchange is not a violation of the limitation as to the use of tracks or terminal facilities. This construction by the Supreme Court of Michigan as to the interpretation of a Michigan statute should be followed by the federal courts under the rule laid down many years ago by the Supreme Court of the United States in Elmendorf v. Taylor, 10 Wheat. 152, 159. Chief Justice Marshall, speaking for the Court in that case, says:

> "This Court has uniformly professed its disposition, in cases depending on the laws of a particular State, to adopt the construction which the Courts of the State have given to those laws. This course is founded on the principle, supposed to be universally recognized, that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus, no Court in the universe, which professed to be

> governed by principle, would, we presume, undertake to say, that the Courts of Great Britain, or of France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the Courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction, than to depart from the words of the statute. On this principle, the construction given by this Court to the Constitution and laws of the United States is received by all as the true construction; and on the same principle, the construction given by the courts of the several States to the legislative acts of those States, is received as true, unless they come in conflict with the constitution, laws, or treaties of the United States."

See also Lewis' Sutherland Statutory Construction, 2d Ed., paragraph 22.

B.

Even if it could be said that the limitation in subdivision "a" is inconsistent with and is a restriction upon subdivision "d," it must be held that the enactment of subdivision "d" repealed by implication the limitation in subdivision "a."

Subdivision "d" of section 7 was added to section 7 by the amendment of 1911, and it must be assumed that in so far as subdivision "a" is out of harmony with the provisions of the later subdivision, subdivision "d," subdivision "a" was repealed by the enactment of subdivision "d." It cannot reasonably be said that the Legislature would add a new provision to a section of a statute which contains a certain limitation unless it did so with one of two things in mind; it must either have interpreted the new clause as not being inconsistent with the limitation and as not being restricted in its operation by the limitation, or it must have intended by the new clause to repeal the limitation in so far as it is inconsistent with the new clause. The Legislature must have intended to accomplish something by the enactment of subdivi-

sion "d." But to give to the limitation contained in subdivision "a" the meaning contended for would be completely to nullify subdivision "d," enacted at a later period and intended to impose new duties upon railroad companies.

It is a well known rule of construction that where two legislative acts are repugnant to, or in conflict with each other, the one last passed, being the latest expression of the legislative will, must govern although it contains no repealing clause.

36 Cyc. 1073.

And the rule is stated in the following language in Lewis' Sutherland Statutory Construction, 2d Ed., paragraph 247, where numerous cases are cited:

> "An implied repeal results from some enactment the terms and necessary operation of which cannot be harmonized with the terms and necessary effect of an earlier act. In such case the latter law prevails as the last expression of the legislative will; therefore, the former law is constructively repealed, since it cannot be supposed that the law making power intends to enact or continue in force laws which are contradictions. The repugnancy being ascertained the latter act or provision in date or position has full force, and displaces by repeal whatever in the precedent law is inconsistent with it."

It must therefore be held that, in so far as the limitation in subdivision "a" is inconsistent with and is a restriction upon subdivision "d," it was repealed by the enactment of subdivision "d." And, if it can be said that the requirement of interchange of local traffic which the plaintiff attacks in this case constitutes a use of its tracks or terminal facilities, then the limitation as to the use of tracks or terminal facilities was repealed by subdivision "d," and under the latter subdivision such interchange of traffic must be made even though it involves the use by one carrier of the tracks and terminal facilities of another.

II.

The laws of the State of Michigan requiring this interchange of traffic on the part of complainant are not void because depriving complainant of its property without due process of law in contravention of the fourteenth amendment to the constitution of the United States.

Complainant contends that by requiring it to make this interchange of traffic it is deprived of its property without due process of law in contravention of the fourteenth amendment to the constitution of the United States. It is the contention of the defendants that by requiring complainant to make such interchange of traffic, it is not deprived of its property without due process of law for two reasons:

First, Complainant cannot attack these laws of the State of Michigan. Complainant is a corporation foreign to the State of Michigan, and if it has the right to do business in the state at all, it has the right to do business only under the restrictions and limitations imposed by the laws of Michigan upon domestic corporations, and it has impliedly agreed by coming into this state to comply with such laws.

Second, The laws of the State of Michigan, in requiring this interchange of traffic, do not deprive a railroad company of its property without due process of law.

A.

Complainant is a foreign corporation and by coming into the state, it has submitted itself to the laws of the state, and has agreed to do the very things required by Act No. 300 of the Public Acts of 1909, as amended by Act No. 139 of the Public Acts of 1911, and it cannot therefore attack such laws.

It is competent for any state to prescribe any conditions it chooses to prescribe, within which foreign corporations must act if they act at all. It may exclude them entirely

if it sees fit to do so, and may invalidate all their acts done within its borders and without its permission.

Home Ins. Co. v. Davis, 29 Mich. 238, 239.

As a state has the power entirely to exclude from its limits a foreign corporation, so it has the power, subject to constitutional limitations, of prescribing the terms upon which alone it may be permitted to do business within its limits, and of imposing any restrictions which it may see fit. It has been repeatedly held, and there seems to be no conflict of authority, that corporations of one state have no right to exercise their franchises in another state except upon the assent of such other state, and upon such terms as may be imposed by the state where their business is to be done. The conditions imposed may be reasonable or unreasonable; they are absolutely within the discretion of the Legislature.

19 Cyc. 1251.

The Supreme Court of the United States, in recognizing this rule in the case of Hooper v. California, 155 U. S. 648, 655, uses the following language:

> "The State of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or a marine business. She has the power, if she allows any such companies to enter her confines, to determine the conditions on which the entry shall be made. And, as a necessary consequence of her possession of these powers, she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting within her jurisdiction with any foreign company which has not acquired the privilege of engaging in business therein, either in his own behalf or through an agent empowered to that end.

> The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

Section 4 of Act No. 206 of the Public Acts of the State of Michigan for 1901, as amended by Act 310 of the Public Acts of 1907, an act governing the terms and conditions under which foreign corporations may be admitted to do business in the State of Michigan, provides in part as follows:

> "When such corporation has fully complied with the provisions of this act, the secretary of state may issue to such corporation a certificate of authority to carry on such business in this state, during the period of its corporate existence, but not exceeding thirty years: Provided, That no such foreign corporation shall be permitted to transact business in this state unless it be incorporated in whole, or in part, for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. And the secretary of state shall in the certificate which he issues state under what act such corporation is to carry on business in this state, and such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act."

Railroad companies organized under the laws of the State of Michigan are required by the acts under which they are incorporated to furnish equal facilities to all other and connecting lines. Section 28 of Act 198 of the laws of 1873 (section 6253 of the Compiled Laws of 1897) provides in part, that:

> "All railroad companies in this state shall furnish equal facilities for the transportation of passengers and freight to all railroads that shall connect with or in-

tersect its line of railroad, without discrimination in favor of or against any such connecting or intersecting line of road."

And section 41 of Act 198 of the Laws of 1873, (section 6266 of the Compiled Laws of 1897) provides in part, that:

> "All railroad corporations shall grant equal facilities for the transportation of passengers and freight to all persons, companies, or corporations, without discrimination in favor of any individuals, companies, or corporations, * * * * * * * * * * Such corporations connecting or intersecting as aforesaid, shall also, whenever desired by either of them, or ordered by the commissioner of railroads (railroad commission), so unite and connect the tracks of said several corporations, as to permit the transfer from the track of one corporation to the other of loaded or unloaded cars, designated (designed) for transportation upon both roads."

And section 9 of Act 198 of the Laws of 1873, (section 6234 of the Compiled Laws of 1897) provides, in part, that:

> "Every such corporation shall possess the general powers and be subject to the liabilities and restrictions following; that is to say: * * * * * * * * * *
> Sixth, to cross, join and unite its railroads, bridge or tunnel with any other railroad now or hereafter constructed under any law whatever at any point on its route, and upon the grounds of such other railroad now or hereafter constructed with the necessary turnouts, sidings and switches and other accommodations and conveniences, in furtherance of the objects of its connections; and to make all such business arrangements as said companies may agree upon. Every company whose railroad shall be intersected by any other railroad shall unite with the owners of such other railroads in forming such intersections and connections, and grant facilities for the same as hereinafter provided;"

And section 49 of Act 198 of the Laws of 1873, (section 6273 of the Compiled Laws of 1897) provides that:

"Every railroad and railway company operating a railroad in whole or in part in this state which company may have been by means of a consolidation under any general or special law of this state, or by means of a mortgage foreclosure and sale and reorganization, under any general law of this state, is hereby declared to be in all respects subject to the general laws of the state respecting railroads as now existing or as hereafter amended; and any franchise, right, power, privilege, immunity or exemption claimed by any such railroad or railway company of a kind which would not belong to a company organized under the general railroad laws of the state as now existing or as hereafter amended is hereby annulled and abrogated, and every such company shall be subject to all the restrictions and perform all the duties now imposed by the general laws or which may hereafter be imposed upon railroad companies."

The railroad commission act of the State of Michigan for 1873 (Act 79 of the laws of 1873,) (section 5220 of the Compiled Laws of 1897) provided in section 15, that:

"Every corporation owning a road in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order, and properly loaded: Provided, further, That nothing herein contained shall apply to the drawing of the cars of stock car-loaning companies. If the corporations cannot agree upon the stated periods at which the cars shall be so drawn, or the compensation to be paid, the said commissioner shall, upon petition of either party and notice to the other, and after hearing the parties interested, determine the rate of compensation and fix such periods, having reference to the convenience and interest of the corporation or corporations, and the public to be accommodated thereby, and the award of the commissioner shall be binding upon the respective corporations interested therein until the same shall have been revised, or alterations shall be made within one year after the award. Any railroad corporation refusing to

> comply with the provisions of this section shall be liable to a penalty not exceeding five hundred dollars."

Act 79 of the Laws of 1873 was superseded by the present railroad commission act.

Complainant, if doing business in the State of Michigan, is doing business as a foreign corporation. By coming into the state, it subjected itself to the laws of the state regulating railroad companies, and impliedly agreed to comply with the requirements and regulations imposed upon railroad companies by those laws. The statutes cited above were in existence when complainant came into the State of Michigan, and complainant is therefore bound to comply with them as a condition precedent to being permitted to do business here. It came into the state and was permitted to do business here, if it has been permitted to do business at all, under an implied condition or agreement that in consideration of being allowed to do business in this state it would comply with the laws of the state regulating railroads. Those laws required railroad companies to make mutual interchange of carload traffic over connecting lines, and complainant cannot complain that by later acts it has been more specifically required to do what it in substance agreed to do when it came into the state. As early as 1881, the Supreme Court of the State of Michigan, speaking through Justice Cooley, in the case of Michigan Central Railroad Company v. Smithson, 45 Mich., 221, cited Act No. 79 of the Laws of 1873, above referred to, and commented on the duty of railroad companies to interchange cars in the following language:

> "The primary fact that must rule this controversy is that the Michigan Central Railroad Company is compelled to receive and transport over its road all the varieties of freight cars which are offered to it for the purpose and which are upon wheels adapted to its gauge. It is compelled to do so—First, because the necessities of commerce demand it. It cannot and would not be tolerated that cars loaded at New York for San Francisco, or at Boston for Chicago, should have their freight transferred from one car to another

whenever they passed upon another road. Time would be lost, expense increased, injuries to freight made more numerous, and no corresponding advantage accrue to any one. It is compelled to do so, second, by its own interest. To attempt to stop every car offered to it at its own termini, that the freight might be transferred to its own vehicles, would be to drive away from its line a large portion of its traffic, and compel it to rely upon a local business for which it must increase its charges to make up if possible for what it would lose. But third, the statute itself requires it. It is provided by General Laws 1873, p. 99, that 'every corporation owning a road in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation.' The necessities of commerce require this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the State to punish could hardly fail to be speedy and effectual."

B.

Even if complainant had not subjected itself to the laws of Michigan requiring interchange of traffic and could complain of such laws, such laws are valid and do not deprive a railroad company of its property without due process of law in contravention of the fourteenth amendment to the constitution of the United States.

As previously stated, at common law there was no duty resting upon common carriers to interchange cars or make through ratings, and the Interstate Commerce Act, as it stood prior to the Hepburn amendment of 1906, was held not to enlarge the common law duty in this respect. The common law duties of common carriers have, however, been greatly enlarged and extended by statute with the growth and increasing importance of transportation, and courts have gone to great lengths in upholding the right of the state to regulate the business of common carriers and prescribe

the conditions under which they shall serve the public. The requirement imposed upon common carriers of interchange of carload traffic and of through routing has been upheld by the supreme courts of various states under a variety of state constitutions and statutes.

Burlington, etc., R. R. Co. v. Dey, 82 Ia. 336, 48 NW. 98;
Jacobson v. Wis., etc., R. R. Co., 71 Minn. 532, 74 NW. 893;
Mich. Central R. R. Co. v. Smithson, 45 Mich. 221, 7 NW. 795;
Mich. R. R. Comm. v. Mich. Cent. R. R. Co., (Nov. 3, 1911) 132 NW. 1068;
Pittsburgh, etc., R. R. Co. v. Hunt, (Ind.) 86 NE. 328;
Chicago, etc., R. R. Co. v. R. R. Comm. (Ind.) 95 NE. 364;
State v. Jacksonville Terminal Co., (Fla.) 27 So. 225, 236;
Inman v. St. Louis, etc., R. R. Co. (Tex.) 37 SW. 37;
Peoria, etc., R. R. Co. v. Chicago, etc., R. R. Co. 109, Ill., 135, 139.

And the Supreme Court of the United States has sustained a state statute requiring interchange of traffic by connecting carriers.

Wis., etc., R. R. Co. v. Jacobson, 179 U. S. 287.

In Burlington, etc., R. R. Co. v. Dey, supra, 82 Ia., 336; 48 N. W. 98, the Supreme Court of Iowa, in upholding the constitutionality of a statute which prescribed that loaded cars should be transferred from one line to another and that reasonable joint through rates should be established by connecting lines upon the demand of any person interested, says in part:

> "The arranging of what is called 'joint through rates' is not a thing that is new in the business of railroad transportation. The current history of the country discloses the existence of the practice among railroads to

make through shipments of freight without change of cars. Nor is this practice of recent origin: It has existed whenever the business of the roads demanded it. Expedition and economy in transportation induced contracts and arrangements for through shipments between points on connecting roads. It may be that in some cases the managers of the roads refused or failed to enter into such arrangements or contracts, and it may be that in other cases the business of the roads has not been managed wholly in accord with the best interests of the corporations owning them, and with the requirements of the law. But such failure of duty does not establish the right to be exempt therefrom. Surely, the course of business which has been found, by experience of railroad management, to be promotive of economical transportation and increase of business, thereby promoting the interest of the owners of the railroads and the shippers, ought to be pursued; and, if the railroad management fail or refuse to pursue it, the state, as it has done in the statutes under consideration, ought to require it to be pursued. This the state can do under the authority it possesses to regulate and control carriers, and provide maximum freight charges.

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"The course of business of railroad companies, originating in the wants and demands of commerce, requires the cars of one company to be delivered to another for transportation. It is presumed that rules relating to compensation for the cars transported are settled by agreement, or under rules recognized and prevailing in the business of transportation by railroads. At all events, the law provides rules under which this matter of compensation may be settled. It is competent for the railroad commissioners, if it be necessary, to impose rules touching this matter, in order to aid the railroad companies to perform the duty imposed by the statute to provide for joint rates, or to require or enforce the performance of that duty. The fact that the transfer of cars from one company to another, for the transportation of property over more than one railroad, without breaking bulk, has been practiced so long as to be recognized as of the course of business of which we will take judicial notice, (Peoria & P. U. Ry. Co. v.

> Chicago, R. I. & P. Ry. Co., 109 Ill. 135), is a complete answer to the complaints made in the objections under consideration. Surely, a course of business so long pursued, and so extensively prevailing, and demanded by the commerce of this country, cannot, when recognized and required by statute, become so objectionable in principle, so oppressive in operation, as to require the statute to be declared unconstitutional. A railroad company, as a common carrier, is required to receive and transport freight offered to it for transportation. The reasons upon which this rule is founded impose upon it the obligation to haul cars of other companies brought to it for the transportation over its own road. Peoria & P. U. Ry. Co. v. Chicago, R. I. & P. Ry. Co., 109 Ill. 135. As the course of business of the railroad companies and the rules of law require them to transport the cars of other companies, surely a statute prescribing and enforcing the duty thus imposed cannot be regarded as interfering with the constitutional guaranties for the protection of the rights and property of such companies." (48 NW. 103-104.)

In Jacobson v. Wis., etc., R. R. Co., supra, 71 Minn. 532; 74 NW. 893, the Supreme Court of Minnesota, having under consideration a statute requiring the making of physical connection between roads and the transfer and interchange of loaded cars, said of its constitutionality:

> "As incidental to the operation of its road, a railroad company has the power to interchange cars with other connecting companies, and this is the ordinary and usual way of doing business. We are clearly of the opinion that the legislature has the power to compel a common carrier to do business in the ordinary and usual way, and therefore may compel such interchange of cars as incidental to the business for which the company was chartered. The Supreme Court of Iowa reached the same conclusion in Railway Co. v. Dey, 48 N. W. 98. See, also, Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co., 110 U. S. 667, 4 Sup. Ct. 185; Peoria & P. U. Ry. Co. v. Chicago, R. I. & P. Ry. Co., 109 Ill. 135; Railway Co. v. Smithson, 45 Mich. 212, 7 N. W. 791; State v. Wabash, St. L. & P. Ry. Co., 83 Mo. 144." (74 N. W. 895.)

In State v. Jacksonville Terminal Co., supra, (Fla.) 27 So. Rep. 225, 236, a regulation made by the Railroad Commissioner under power conferred by statute, requiring a terminal company operating a common passenger terminal station for the purpose of furnishing terminal facilities to common carriers entering therein, to admit a certain railroad company to the privileges and benefits of the terminal station upon payment of a reasonable compensation, was held not to deprive the terminal company of its property without due process of law. The Court in passing on the constitutional question, says in part:

> "We have no doubt that property devoted to the uses to which the pleadings show this terminal is devoted is affected with a public interest, and that the state has power to regulate such use by requiring the owner to serve equally and fairly all railroad common carriers which the public welfare may require, and to confine its charges therefor to reasonable rates of compensation, and that the exercise of this power does not deprive the defendant in error of its liberty or property without due process of law, under the constitution of this state or of the United States." (Citing cases.)

In Michigan Central Railroad Company v. Smithson, 45 Mich. 221, 7 N. W. 795, Judge Cooley said of a requirement of interchange of traffic contained in the laws of Michigan of 1873:

> "It is provided by general laws 1873, page 99, that 'every corporation owning a road in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of another corporation.' The necessities of commerce require this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the state to punish could hardly fail to be speedy and effectual."

And the Supreme Court of Michigan has held in a recent

case that, under subdivision "b" of the present railroad commission act which provides that, where it is practicable, the railroad commission may require railroads to interchange cars, freight and passenger traffic and may require track connection upon such terms as it may determine, the railroad commission may make an order requiring two railroads to connect their tracks and thereafter interchange cars and passenger traffic, and that such order and such requirement does not deprive the railroad company of its property without due process of law.

> Michigan Railroad Commission v. Mich. Central, supra, 168 Mich. 230.

The Court in passing upon this question says:

> "Does the order deprive respondent of its property without due process of law? For the affirmance of the proposition that it does respondent relies upon Central Stock Yards Co. v. L. & N. Ry. Co., 192 U. S. 568, 24 Sup. Ct. 339, 48 L. Ed. 565; and Louisville & Nashville Co. v. Central Stock Yards Co., 212 U. S. 132, 29 Sup. Ct. 246, 53 Lawyers Edition 44. In our opinion, the present case is distinguishable from, and not ruled by, the cases cited, for the reasons that the statute expressly imposes upon respondent an obligation to interchange cars, etc., and subdivision "c" of section 7 above quoted expressly provides for reasonable compensation." (237).

In Pittsburgh, etc., R. R. Co. v. Hunt, supra, 86 N. E. 328, it was held that an order requiring two railroads to connect their tracks and interchange traffic did not deprive them of their property without due process of law, and did not give one company the use of the other's tracks and terminal facilities. The Indiana act provided in part, as follows:

> "Every such connecting carrier shall, upon the order of the commission made upon complaint filed and after a hearing is had, as provided in this act, receive from its connecting lines at junction points, all carload ship-

ments tendered by any such connecting line, and upon payment of reasonable transfer or switching charges therefor, shall transport such car over its tracks and deliver the same to the consignee on his private track connected with such tracks. Every such connecting carrier at junction or terminal points, upon like complaint, proceedings and order of the commission, as provided in this paragraph, shall accept from any other connecting carrier any empty car there tendered, and upon payment of a reasonable switching charge therefor, shall transport any such empty car to any industry or private track connected with its line at such junction or terminal point for loading, and return the same when loaded to the line making such delivery: Provided, that any such carrier shall not be required to perform such switching services in any case where such carrier can transport the freight to destination and point of delivery with reasonable dispatch and at the same rate as the line offering the car, and shall at the time offer the car and be prepared to perform the services."

In upholding the constitutionality of the act, the Supreme Court of Indiana says in part:

"The validity of the claim that in this case there is a taking of property without just compensation, or a deprivation of property without due process of law, or a denial of the equal protection of the laws, depends almost wholly upon whether it is shown that in the upholding of the order, in so far as its terms are fixed, there is an unreasonable interference with appellant in the enjoyment of its property rights. Notwithstanding the concession of counsel as to the validity of the statute as applied to ordinary cases, it will be helpful to consider the nature of the duty enjoined, in the determination of the question whether in the particular instance it is shown that any constitutional right has been invaded.

"In one sense of the term appellant's property is private, and as such it is within the protection of the federal and state Constitutions; but such property is subject to due regulation, since it has been devoted to a public use, particularly since that use is, in a limited

sense of the term, for the purposes of a public highway. Lake Superior, etc., R. Co. v. United States, 93 U. S. 442, 23 L. Ed. 965. As was said in Barton v. Barbour, 104 U. S. 126, 135, 26 L. Ed. 672: 'A railroad is authorized to be constructed more for the public good to be subserved than for private gain. As a highway for public transportation it is a matter of public concern, and its construction and management belong primarily to the commonwealth, and are only put into private hands to subserve the public convenience and economy; but the public retain rights of vast consequence in the road and its appendages with which neither the company nor any creditor or mortgagee can interfere. They take their rights subject to the rights of the public, and must be content to enjoy them in subordination thereto.' While railroad companies are chartered for the purpose of affording due facilities of transportation, yet at the common law there are certain obligations of an imperfect character which have been left to such carriers, upon the presumption that their business interests will cause them sufficiently to discharge such duties, as in the building of interchange freight tracks, the erection of depots, and the like. It is clear, however, that the Legislature, which possesses the right to make all manner of reasonable and wholesome laws within constitutional limits, may, to the extent of that which is reasonable, convert such imperfect obligations into absolute legal duties. Minneapolis, etc., R. Co. v. State ex rel., 193 U. S. 53, 24 Sup. Ct. 396, 48 L. Ed. 614. (page 332.)

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"Relative to the casting of transfer business upon appellant's yards, the fact is not to be forgotten that the very purpose of the statutory requirement and order is to facilitate the movement of commerce, that the two railroad companies may the more efficiently perform the function for which they were chartered. If it is more convenient and economical for many shippers along two important lines of railroad which intersect each other that facilities should be provided at such junction for the interchange of freight in car load lots—as may fairly be assumed in view of the silence of the complaint upon the subject—it is an altogether

insufficient answer that at the particular point of intersection the objecting company will be deprived of trackage for a few cars.

* * * * * * * *

"It is contended by appellant's counsel that the order amounts to a taking of its property without due compensation. It is true that the building of the interchange track would interfere with certain other tracks of appellant, but it by no means follows that it is entitled to compensation for that. The power of eminent domain and the police power spring from radically different sources, and when it is considered that appellant has dedicated its property to the use of the public for the purposes of transportation, and that the connection of intersecting lines of railroad greatly facilitates the shipment of freight, it is evident—the regulation being found to be reasonable—that uncompensated obedience is required. The extent of the police power in the regulation of the use of railway tracks is well illustrated by Mayor, etc., v. Baltimore, etc., Co., 166 U. S. 673, 17 Sup. Ct. 696, 41 L. Ed. 1160." (pp. 334, 335.)

In Chicago, etc., R. R. Co. v. Railroad Commission of Indiana, supra, (Ind.) 95 N. E. 364, a statute almost identical with the Michigan statute was before the court. The Indiana statute provided in part, that:

"All carriers subject to the provisions of this act shall deliver to any consignee on his private track or track used by him for loading or unloading, or on their public delivery track and shall receive from any connecting carrier, at any terminal point in this state, for the purpose of delivery to points located on its line at such terminal, or to points reached over or through its line at such terminals, all carload freight tendered it by any such connecting line, and shall deliver the same to the consignee on his private track, or on its tracks, or to the connecting line on its tracks at such terminal, within twenty-four hours after the same is tendered." (Burns' Annotated Indiana Statutes, Revision of 1908, section 5206.)

The Supreme Court of Indiana upheld the statute as not depriving a railroad company of its property without due process of law and as not being in contravention of the federal constitution. We quote the following from the opinion of the Court:

> "The appellant asserts that the order violates its property rights saved by the fourteenth amendment to the Constitution of the United States, because it requires it to receive at Bloomington freight carried there by the Indianapolis Southern, and deliver it to industries located on its public and private tracks.
>
> "The appellant claims that where its freight rates are the same as that of its competitor, on inbound business, it has a right to serve the industries located on its public and private tracks at Bloomington, and to the earnings for such service; that it is not bound to switch loaded cars from the Indianapolis Southern consigned to industries on its tracks, but that it has, by reason of the location of such industries the right to such business, which right is a property one, which cannot be lawfully taken away. It appears from the evidence that there are 28 industries located on its public and private tracks in the vicinity of Bloomington, and, now that one industry is similarly located on the Indianapolis Southern.
>
> "Counsel for appellant rely on Louisville, etc., R. R. Co. v. Central Stock Yards, 212 U. S. 132, 29 Sup. Ct. 246, 53 L. Ed. 441, in support of this proposition. The decree in that case required the railway company to deliver its own loaded cars to the Southern Railway at Louisville to be taken to the Central Stock Yards on that line for unloading.
>
> "The facts in that case were that the Bourbon Stock Yards were located on the line of the Louisville & Nashville Company, and the Central Stock Yards were on the line of the Southern Company, at Louisville. There was physical connection between the roads. There was a station on each line at the stock yards. The Constitution of Kentucky required any carrier to switch empty or loaded cars coming to or going from any point where there is a physical connection between it and another line. The decree appealed from required

the appellant to deliver its own cars to another road, and the court held this requirement void under the fourteenth amendment to the federal Constitution as an unlawful taking of property. The court based its decision on the ground that the Constitution of Kentucky, under the terms of which the decree was entered, made an undiscriminating requirement of the carrier, without respect to its paramount needs, and without regulations for its protection from the loss or undue detention of cars. The court intimated, however, that if the Kentucky law had made proper provisions for the protection of the carrier, the action might have been sustained. The court, in the same case, held that another portion of the decree was invalid, which required appellant to transfer and deliver from the Central Stock Yards all live stock consigned from that point to any one at the Bourbon Stock Yards, because the requirement of acceptance of cars at an arbitrary point, near the terminus of a competing road would enable the latter to get the use of costly terminals of its competitor, and thus take its property in a very effective sense.

"The laws of Indiana meet the objections of the United States Supreme Court to the Kentucky Constitution. Section 4 of the shippers' bill (Burns' Stat. 1908, sec. 5206) authorizes relief by Commission when there is a congestion of business on the carrier's public tracks. As to outbound traffic, carriers are not required to do switching service, if they are able and willing to transport the freight, with reasonable dispatch, at the same rate as that of the competitor. Paragraph M of section 5533, Burns' Stat. 1908, fully protects the carrier in respect to return of cars. Paragraph F. of the same section provides for compensation for the use of cars for overdetention. For switching service a carrier is authorized to impose and collect a 'reasonable transportation charge,' and this would include more than the labor cost in moving the car, and might include also the element of a return on the capital invested in terminal facilities. There is no complaint in this cause that the switching rate fixed by the Commission is unreasonable, and does not include the above elements. We do not believe the decision in the case of Louisville, etc., R. R. Co. v. Central Stock

> Yards, supra, is applicable to the facts here. As was said before, in this opinion, the court cannot consider the question of congested terminals, because relief for that must first be sought from the Commission." (95 N. E. pp. 369-370.)

In Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 287, a statute of Wisconsin providing for track connections and equal and reasonable facilities for interchange of cars and traffic was involved. The Supreme Court of the United States held that the judgment rendered by the state court directing two carriers to make track connections with each other did not violate the constitutional rights of either. The Court says, in part:

> "Can it be possible that a railroad chartered and built primarily for the accommodation and in the interests of the public can under such facts legally refuse the track connections directed in this case? Can it refuse to obey the commands of the legislature in such case upon the sole ground that it may thereby somewhat lessen the earnings of its road? Or can it refuse to make such connections because, if they were made, wood could be brought from the forests of northern Minnesota to all towns along its line west of Hanley Falls, and there sold for a less price than can now be done, when without such connection being made the demand for the wood along the line of the road of the plaintiff in error is nevertheless constantly decreasing owing to its quality and price? We think these questions should receive a negative answer. The interests of the public should not be thus wholly, and it seems to us, unjustifiably ignored.
>
> "Taking the facts which we have already enumerated into consideration, we think there is no justification furnished for the argument that the judgment, if enforced, would violate any of the constitutional rights of the plaintiff in error. In so deciding we do not at all mean to hold that under no circumstances could a judgment enforcing track connections between two railroad corporations be a violation of the constitutional rights of one or the other, or possibly of both such corporations. It would depend upon the facts surrounding the

cases in regard to which the judgment was given. The reasonableness of the judgment with reference to the facts concerning each case must be a material, if not a controlling, factor upon the question of its validity. A statute, or a regulation provided for therein, is frequently valid, or the reverse according, as the fact may be, whether it is reasonable or an unreasonable exercise of legislative power over the subject-matter involved. And in many cases questions of degree are the controlling ones by which to determine the validity, or the reverse, of legislative action.

"We think this case is a reasonable exercise of the power of regulation in favor of the interests and for the accommodation of the public, and that it does not, regard being had to the facts, unduly, unfairly or improperly affect the pecuniary rights or interests of the plaintiff in error." (pp. 300-301.)

The Supreme Court of the United States in commenting on Wisconsin, etc., R. R. Co. v. Jacobson in a later case (Minneapolis & So. Louis R. R. Co. v. Minnesota, 186 U. S. 263), says:

"It may, also, be said in this connection that in Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 287, we held that, under this very act, railways in Minnesota might be compelled to make track connections at the intersections of other roads for transferring cars from the lines or tracks of one company to those of another, as well as for facilities for the interchange of cars and traffic between their respective lines. The case did not involve the right of the Commission to prescribe joint through rates for the transportation of freight between points on their respective lines, but if any inferences are to be derived from the opinion, they are in favor of such right."

It was claimed at the hearing before the Railroad Commission that the cases of Central Stock Yards Co. v. Louisville R. R. Co., 192 U. S. 568, and Louisville, etc., R. R. Co. v. Central Stock Yards, 212 U. S. 132, were opposed to the authorities to which reference has been made.

In Central Stock Yards Company v. Louisville Railway Company, 192 U. S. 568, it was claimed that under the Kentucky constitution requiring railroad companies to receive, deliver, transfer and transport freight from and to any point where there was a physical connection between the tracks of the railroad concerned and any other, a railroad company could be compelled to receive live stock tendered to it for the Central Stock Yards station and deliver same at a point of physical connection between its road and the Southern Railway Company for ultimate delivery to or at the Central Stock Yards. The Supreme Court of the United States held that the requirement of the Kentucky constitution must be held to refer to transportation, and the companies considered as if the stock yards were side by side. The Court held that, under the provisions of the Kentucky constitution as construed by it, no obligation was imposed upon a railroad company having its own stock yards in Louisville to accept live stock at the junction point of the two roads for delivery at the stock yards of another railroad in the same city and neighborhood. The Court says, in part:

> "The Bourbon Stock Yards are the defendant's depot. They are its depot none the less that they are so by contract and not so by virtue of a title in fee. Unless a preference of its own depot to that of another road is forbidden, the defendant is not within the Act of Congress. Suppose that the Southern Railway station and the Louisville and Nashville station were side by side, and that their tracks were connected within or just outside the limits of the station grounds. It could not be said that the defendant was giving an undue or unreasonable preference to itself or subjecting its neighbor to an undue or unreasonable disadvantage if it insisted on delivering live stock which it had carried to the end of the transit at its own yard. These views are sanctioned by what was said in Covington Stock Yards Co. v. Keith, 139 U. S. 128. The fact that the plaintiff's stock yards are public does not change the case. See further Butchers' and Drovers' Stock Yards Co. v. Louisville & Nashville R. R., 67 Fed. Rep. 35.

"If cattle are to be unloaded, then, as was said in Covington Stock Yards Co. v. Keith, the defendant has a right to unload them where its appliances for unloading are, and cannot be required to establish another set hard by. On the other hand, if the cattle are to remain in the defendant's cars it cannot be required to hand those cars over to another railroad without a contract, and the courts have no authority to dictate a contract to the defendant or to require it to make one. (Citing long list of cases.) All that was decided in Wisconsin, Minnesota & Pacific R. R. v. Jacobson, 179 U. S. 287, was that by statute two railroad companies might be required to make track connections. So much of the statute as undertook to regulate rates was not passed upon. See Minneapolis & St. Louis R. R. v. Minnesota, 186 U.S. 257, 263. There is no act of Congress that attempts to give courts the power to require contracts to be made in a case like this.

"What we have said applies, in our opinion, to the constitution of Kentucky with little additional argument. The requirement to deliver, transfer and transport freight to any point where there is a physical connection between the tracks of the railroad companies, must be taken to refer to cases where the freight is destined to some further point by transportation over a connecting line. It cannot be intended to sanction the snatching of the freight from the transporting company at the moment and for the purpose of delivery. It seems to us that this would be so unreasonable an interpretation of the section that we do not find it necessary to consider whether under any interpretation it can be sustained. In view of the course taken by the argument we may add that we do not find a requirement that the railroad company shall deliver its own cars to another road.

* * * * * * * *

"We have discussed the case as if the two stock yards were side by side. They were not, but they both were points of delivery for cattle having Louisville as their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might be regarded as bona fide further transportation over a connecting road and

> within the requirements of the Kentucky constitution. However that may be, we are of opinion that the court below was entirely right, so far as appears, in treating this as an ordinary case of stations at substantially the same point of delivery, and, therefore, as one to be dealt with as if they were side by side. As the defendant would not be bound to deliver at the Central Stock Yards if they were by the side of its track, its obligation is no greater because of the intervention of a short piece of the track of another railroad. As we have said, the delivery would have to be made either by unloading or by the surrender of the defendants' cars." (pp. 570-571-572.)

A similar state of facts came up again in Louisville, etc., R. R. Co. v. Stock Yards, 212 U. S. 132, and the Court again considered the case as if the two stock yards stood on the same footing, as if they were stations of two railroads placed side by side. The Court in speaking of the right to compel the interchange of traffic under the constitution of the State of Kentucky, uses the following language:

> "It is argued, however, that the requirement that the plaintiff in error should deliver its own cars to another road was void under the Fourteenth Amendment as an unlawful taking of its property. In view of the well known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transshipment or breaking bulk, in case of an unreasonable refusal by a carrier to interchange cars with another for through traffic. We do not pass upon the question. It is enough to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulations for his protection from the loss or undue detention of cars, and for securing due compensation for their use. The constitution of Kentucky is simply a universal undiscriminating requirement, with no adequate provisions such as we have described. The want cannot be cured by inserting them in judgments under it. The law itself must save the parties' rights, and not leave them

to the discretion of the courts as such. (Citing cases.) It follows that the requirement of the state constitution cannot stand alone under the Fourteenth Amendment, and that the judgment in this respect also, being based upon it, must fall. We do not mean, however, that the silence of the constitution might not be remedied by an act of legislature or a regulation by a duly authorized subordinate body if such legislation should be held consistent with the state constitution by the state court. We should add that the requirement in the first part of the judgment, which we have been discussing, is open to the objections mentioned in the former decision so far as it practically requires the Louisville and Nashville Railroad to deliver cars at Louisville elsewhere than at its own terminus. 192 U. S. 570, 571.

"There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville and Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone." (pp. 143, 144, 145.)

The Court did not refer to the case of Wisconsin, etc., R. R. Co. v. Jacobson, supra, but when the companion case of Central Stock Yards v. Railroad Company, 192 U. S. 568, was before the Circuit Court of Appeals, (118 Fed. 113, 119), that Court says:

> "It is within the power of a state to require connecting tracks between two railroad companies at an intersection for the transfer of cars used in the local business of such lines of railroad. This may have been necessary for the accommodation of state commerce. (Citing Wis., etc., R. R. Co. v. Jacobson.)"

It will be seen that the Stock Yards cases are in no way an adjudication of the question involved in this case. The decision of the Supreme Court of the United States was confined expressly to the particular facts shown by the record to exist in those cases. It was held that the constitution of Kentucky contained no adequate provision for compensation, and that it therefore came under the ban of the Fourteenth Amendment. The Court, in holding that one company could not be required to deliver over to another at the junction point just outside its terminals, cars consigned to the stock yards of the other, based its decision squarely on the ground that the constitution of Kentucky did not require such interchange **where there was no further transportation**, and that such interchange could not be required where stations or unloading points were side by side because no further transportation was then involved. Whatever was said by the Supreme Court of the United States on this point in the stock yards cases was said upon the theory that the two stock yards were located side by side, that both were points of delivery for and actually having Louisville as their destination, and that they were both Louisville stations in effect.

In holding that the Kentucky constitution did not require this interchange of traffic, the Court, speaking through Justice Holmes, in the first case (192 U. S. 571), says:

> "The requirement to deliver, transfer and transport freight to any point where there is a physical connection between the tracks of the railroad companies, must be taken to refer to cases **where the freight is destined to some further point by transportation over a connecting line, it cannot be intended to sanction the snatching of freight from the transporting company at the moment and for the purpose of delivery.** It seems to us that this

would be so unreasonable an interpretation of the section that we do not find it necessary to consider whether under any interpretation it can be sustained. In view of the course taken by the argument we may add that we do not find a requirement that the railroad company shall deliver its own cars to another road * * * * * We have discussed the case as if the two stock yards were side by side. They were not, but they were points of delivery for and actually having Louisville as their general destination. They were both Louisville stations in effect. **It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might be regarded as bona fide further transportation over a connecting road and within the requirements of the Kentucky constitution.**"

And in the second case (212 U. S. 143) the Court, again speaking through Justice Holmes, says:

"It was argued, however, that the requirement that the plaintiff in error should deliver its own cars to another road was void under the fourteenth amendment as an unlawful taking of its property. **In view of the well known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transshipment or breaking bulk,** in case of an unreasonable refusal by a carrier to interchange cars with another for through traffic. **We do not pass upon the question.** It is enough to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulation for his protection from the loss or undue detention of cars and for receiving due compensation for their use. **The Constitution of Kentucky is simply a universal** indiscriminatory requirement with no adequate provisions such as we have described."

It will be noted also that the opinion of the Court in this case was not unanimous. A dissenting opinion was filed by Justice McKenna, in which Justices Harlan and Moody concurred.

The act of Michigan complained of provides that interchange of traffic shall be effected at "reasonable rates," and provides also in subdivision "c," section 7, that "if the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said Commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the Commission shall be binding upon the respective corporations interested therein until the same shall have been revised."

And in subdivision "d," section 7, it is provided that:

> "When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination."

In the Michigan statute, the defects existing in the Kentucky constitution involved in the stock yards cases are eliminated. And the statute of Michigan does not seek to do what was sought to be done in the stock yards cases. It does **not seek to wrest from one carrier at the point of delivery freight which that carrier has brought to that point and which that carrier can carry over its own line to the destination. It does not seek to compel one carrier at the point of delivery to take the traffic of another, and make delivery of the same when no further transportation is involved.** The Michigan statute compels a carrier to interchange traffic only where such interchange involves a further bona fide transportation. And under the express language of the Supreme Court in the stock yards cases, the Court not only did not pass upon

the validity of such a law, but strongly intimated that such a law which properly safeguarded the rights of the carrier, as does the Michigan law, would be valid.

The Michigan statute is in many respects similar to the statute of Indiana construed by the Supreme Court of that state in Chicago, etc., R. R. Co. v. Railroad Commission, supra, 95 N. E. 370. In that case the Court distinguishes the stock yards cases in the following language:

> "Counsel for appellant rely on Louisville, etc., R. R. Co. v. Central Stock Yards, 212 U. S. 132, 29 Sup. Ct. 246, 53 L. Ed. 441, in support of this proposition. The decree in that case required the railway company to deliver its own loaded cars to the Southern Railway at Louisville to be taken to the Central Stock Yards on that line for unloading.
>
> "The facts in that case were that the Bourbon Stock Yards were located on the line of the Louisville & Nashville Company, and the Central Stock Yards were on the line of the Southern Company, at Louisville. There was physical connection between the roads. There was a station on each line at the stock yards. The constitution of Kentucky required any carrier to switch empty or loaded cars coming to or going from any point where there is a physical connection between it and another line. The decree appealed from required the appellant to deliver its own cars to another road, and the court held this requirement void under the fourteenth amendment to the federal constitution as an unlawful taking of property. The court based its decision on the ground that the constitution of Kentucky, under the terms of which the decree was entered, made an undiscriminating requirement of the carrier, without respect to its paramount needs, and without regulations for its protection from the loss or undue detention of cars. The court intimated, however, that if the Kentucky law had made proper provisions for the protection of the carrier, the action might have been sustained. The court, in the same case, held that another portion of the decree was invalid, which required appellant to transfer and deliver from the Central Stock Yards all live stock consigned from that point to any

> one at the Bourbon Stock Yards, because the requirement of acceptance of cars at an arbitrary point, near the terminus of a competing road would enable the latter to get the use of costly terminals of its competitor, and thus take its property in a very effective sense."

And in an opinion rendered by the Railroad Commission of the State of Indiana, May 25, 1909, in the case of Bloomington Coal Co. v. Chicago, etc., Ry. Co., in which an order was issued requiring connecting carriers to interchange carload traffic at a junction point within the switching district of the city of Bloomington, the Commission says of the stock yards cases:

> "We confess we do not clearly understand the case of the L. & N. Railroad Company v. Central Stock Yard Company, U. S. S. C., January 25, 1909, and we understand that three of the justices dissented. We think, however, that the provision of the constitution of Kentucky construed in that case was not as full and as broad as our statute. It appears indeed that the general assembly of Indiana intended that the portion of the terminal facilities of the carriers known as public team tracks, might be used for the delivery and unloading of cars switched upon them from another railway line at terminal points. By section 4 of the shipper's bill quoted above carriers are required to receive from any connecting line at any terminal point all carload freight and to deliver the same to the consignee on his private track or on its tracks."

And the Supreme Court of Michigan in Michigan Railroad Commission v. Michigan Central Railroad Company, supra, 132 N. W. 1071, in sustaining an order requiring physical connection and interchange of traffic, says of the stock yards cases:

> "Does the order deprive respondent of its property without due process of law? For the affirmance of the proposition that it does, respondent relies upon Central Stock Yards Co. v. Railroad Company, 192 U. S. 568; Louisville & Nashville Co. v. Central Stock Yards Co.,

> 212 U. S. 132. In our opinion, the present case is distinguishable from, and not ruled by, the cases cited, for the reasons that the statute expressly imposes upon respondent an obligation to interchange cars, etc., and subdivision c of section 7 provides for reasonable compensation."

It is our contention that, under the decisions hereinbefore referred to and discussed, the statutes of the State of Michigan requiring mutual interchange of traffic in cities like that of Detroit are not unconstitutional because depriving a railroad company of its property without due process of law.

A railroad company is a public service corporation, and while the franchises and property acquired by it are private property, the use to which they are put is nevertheless a public use. And, as said by the Supreme Court of the United States in the often cited case of Munn v. Illinois, 94 U. S. 126, when one devotes his property for a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. And as was said by the Supreme Court of the United States in Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 282, 296, hereinbefore referred to:

> "Railroads have from the very outset been regarded as public highways, and the right and the duty of the government to regulate in a reasonable and proper manner the conduct and business of railroad corporations have been founded upon that fact. Constituting public highways of a most important character, the function of proper regulation by the government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions. (Citing cases.)
>
> "It is because they are such highways that the land upon which the rails are laid, and also that which may be necessary for the other purposes of the corporation, is said to be used for a public purpose, and on that ground the power of eminent domain which is given

> them is held to be a constitutional exercise of legislative authority. The right of the legislature to tax in furtherance of such use is founded upon the same considerations that the use is a public one, and therefore taxation in support of such use is valid. Olcott v. Supervisors, supra. The companies hold a public franchise, and governmental supervision is therefore valid. They are organized for the public interests and to subserve primarily the public good and convenience."

Under the statutes of the State of Michigan, the object of attack in this case, common carriers are required to make a mutual interchange of traffic, to carry each other's cars over their roads to side or team tracks to which such cars are consigned. This requirement, we claim is simply a fair, reasonable and appropriate regulation of the business of common carriers when considered with regard to the interests both of the carrier and the public. The claim made in this case is the claim which has been made in nearly every case involving the regulation of common carriers by the states. The Supreme Court of the United States in Minneapolis & St. Louis Railroad Company v. Minnesota, 186 U. S. 260, 261, in speaking of the claim made in that case that it was beyond the constitutional power of the legislature to compel carriers to enter into involuntary, unreasonable and unprofitable contracts with other companies at the instance of third parties said:

> "This argument in its various applications is one which has been addressed to and considered by this court in nearly every case in which the power of the state to regulate railway charges has been called in question, and the answer made to it in those cases is equally pertinent here. Indeed, it is impossible for the state to exercise this power of regulation without interfering to some extent with the power of a railway to contract either with its customers or connecting lines. The power is one which was said in Munn v. Illinois, 94 U. S. 113, to have been customarily exercised in England from time immemorial, and in this country from its first colonization, for the regulation of

> ferries, common carriers, hackmen, bakers, millers, wharfingers and innkeepers; and the whole object of this class of legislation is to curtail the power to contract by limiting the exactions of those engaged in these occupations, and providing that the rendition of such services shall not raise an implied promise to pay more than a certain fixed sum."

The legislation involved in this case requires that common carriers shall—

> receive and transport at reasonable rates any and all carload traffic offered for transportation between points locally consigned in the same city or town * * * * or from any junction point or transfer point or intersection with another railroad in such city or town any and all carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line, when required so to do."

This does no more than to require companies to make through routings to and between local points in cities like that of Detroit.

As hereinbefore mentioned, neither at common law nor under the Interstate Commerce Act prior to the Hepburn amendment of 1906, could a railroad company be compelled to haul the cars of another company over its line. After the passage of the Hepburn amendment providing for compulsory through routing, the Interstate Commerce Commission was authorized to compel the establishment of through routes and through rating between points where there was not already a satisfactory through route in existence. (It may be stated in this connection that the power of the Commission has been further enlarged by the Amendment of June 18, 1910, in which the limitation "that no reasonable or satisfactory through route exists" is stricken out.) This power of the Commission has been exercised again and again, and compulsory through routes have been established in many cases. The

power of the Commission under the Hepburn amendment seems rarely to have been questioned, and it seems rarely to have been claimed that in requiring through routing and thereby requiring one carrier to transport the cars of another, the carrier transporting the cars was deprived of its property without due process of law. Detroit is a city of over 500,000 population. The transportation companies entering the city own or operate a large number of side or team tracks in addition to their main tracks. These side or team tracks are in effect stations to or from which carload traffic is consigned. They are built for the express purpose of facilitating carload traffic so that the companies' regular freight depots may be devoted to other and less than carload freight. It can hardly be claimed that all of these side and team tracks, because called by the carrier its terminal facilities, are therefore beyond the regulation of the state. In what way do they differ from a carrier's main track? Where can any distinction be drawn between transportation from a team track of one carrier in the City of Detroit to a team track of another carrier in a different part of the city, and transportation between two separate cities or towns? To the shipper whose plant is located on a side track in the City of Detroit, and who wishes to send carload traffic to some other part of the city, these side or team tracks are the main line of transportation. The side tracks over which a car must pass from the manufacturer in the City of Detroit to his purchaser or consumer in a distant part of the same city are the railroad between these two shipping points, and the manufacturer is as much entitled to a "through route" for his product between these local points as is the shipper who ships from Detroit to some distant part of the state.

It seems to us that there is no escape from the fact that team tracks in the City of Detroit are stations to and from which carload freight is consigned. And to compel a carrier to accept and transport to a point on one of its sidetracks to which it is consigned, a car loaded on the side tracks of another carrier and brought by the other carrier to a junction point of the two roads, is to compel nothing more than

through routing between the two local points by the connecting carriers.

Under the Interstate Commerce Act, the Commission can and does compel connecting carriers to enter into through routing agreements between points where there is no satisfactory through route already in existence. The statute of Michigan requires mutual interchange of local traffic, and thereby in effect requires through routing to and between all local points in a city or town. As far as the constitutional question is concerned, the principle is the same. If it is not taking property without due process of law to require a railroad company whose line is a connecting link between two towns to take the cars of another company and transport them over its line, then by a parity of reasoning it is not taking property without due process of law to compel one carrier whose line or team track is a connecting link between two team tracks used as freight depots in a city to take cars of another carrier and transport them over its switch or team tracks to their destination. The use of the carrier's tracks or terminal facilities is no different in one case than it is in another. In each case one carrier is compelled to transport over its tracks the cars of another company.

To hold that the statutes of Michigan requiring mutual interchange of local traffic are unconstitutional and cannot be enforced is to deny to shippers in a city whose population is over 500,000 the same rights as are accorded to shippers in less densely settled communities, that is, the right to have their carload freight routed to its destination even though that destination is on the line of another carrier. As hereinbefore pointed out, the service required under the Michigan Statutes is not what is commonly called a switching service, it is essentially a transportation service which, instead of taking place between two towns or cities, takes place between two local points in the same city or town.

The Interstate Commerce Act, as amended in 1906, limits the authority of the Commission to compel a through route only where there is no satisfactory through route already in existence. Notwithstanding the very limited authority thus

consigned, does not give to the connecting carrier the use of its terminals so as to deprive it of its property without due process of law as was urged in the stock yards cases. The statutes require carriers to serve the public in large cities as they are required to serve the public in less thickly settled communities; they require them to use their side or team tracks, where such side or team tracks are the connecting lines between local shipping points and are used for purposes of transportation, in the same manner as they use their main lines in the delivery of carload freight received from other carriers. The carrier cannot, merely by establishing what is called a switching district and by calling this service a switching service and charging so-called switching rates, change what is essentially a transportation service and make it a switching service, which it claims it is not required to do because it would involve the use of its terminals. As has been said, these public team tracks are in effect depots to and from which carload traffic is consigned; they are in effect separate shipping units between which through routes must be established under the laws of Michigan. By compelling this through routing to and between local points, one road does not give the use of another's tracks or terminal facilities in any different way than is the case where through routing is compelled over connecting lines between two cities or towns. In Cardiff Coal Company v. Chicago & Northwestern Railroad Company, 13 ICC. Repts. 460, 471, an order was made by the Interstate Commerce Commission requiring the Chicago & Northwestern Railroad to join with the Chicago, Indiana and Southern Railroad in establishing through routes from the complainant's mines to all local points on the line of the Chicago & Northwestern. The Chicago and Northwestern claimed among other things that to compel it to enter into through routing agreements from complainant's mine to all local points on its line would be to compel it to give the use of its tracks and terminal facilities to the connecting carrier. In disposing of this contention the Commission says at page 468:

"One further point is made on behalf of the defendant that must not be overlooked. It is said that an order requiring the St. Paul to join with the Chicago, Indiana & Southern Railroad in establishing through routes and joint rates to the points in question would be in violation of that part of section 3 of the act which provides that no carrier shall be required to give the use of its tracks and terminal facilities to another carrier engaged in like business. Without some such provision in the law or some such general understanding of the essential injustice involved, adventurous capital would not be slow in paralleling the great trunk lines and in demanding a connection that would give them the use of the trunk line terminals. But the clause in question has no application to such a state of facts as this record presents. Neither the Chicago, Indiana & Southern nor the Wabash is a competing line with the St. Paul in the territory in question; they are simply connecting lines. And one of them is a necessary link in the through routes demanded by the complainant to the territory in question. But from no point of view can it be said that this proceeding is an effort on the part of either of those lines to acquire the use of the terminal facilities of the St. Paul. It is simply an effort on the part of the complainant to reach those interstate points with its coal. And as we understand the matter the terminals of railroad companies are constructed for no other purpose than to serve shippers, and shippers ordinarily have the right to use them for all legitimate purposes."

It may be suggested that these team tracks in the city of Detroit are not competitive points as far as local traffic is concerned. In the case at bar Mr. Haggerty desires to reach a distant point in the City of Detroit. This point is not reached by the Pere Marquette, the line on which his plant is located. It is, however, reached by the Grand Trunk. Mr. Haggerty therefore ships his car, first, over the Pere Marquette to the junction point of the two roads, and from the junction point it is taken over the Grand Trunk to its destination, a team track on its line in some other part of the city to which it is consigned. The Grand Trunk is "a necessary

link in the through routes demanded by him to the territory in question." From no point of view can it be said that this proceeding is an effort upon the part of the Pere Marquette to acquire the terminal facilities of the Grand Trunk. It is simply an effort on the part of Mr. Haggerty to reach these local points on the Grand Trunk with his product. The statute gives him this right and requires the carriers to do this through routing. To hold the statute unconstitutional, and to hold that these carriers cannot be compelled to make this interchange of local traffic is to deprive Mr. Haggerty and other shippers of these local markets. The Pere Marquette, the road on which Mr. Haggerty's plant is located, does not run either by its main line or by its side tracks to many of these local shipping communities. The Grand Trunk does run to these communities. The Pere Marquette and Grand Trunk are connecting carriers. As to these local points and as to this local traffic they are not competing carriers. The statute of Michigan requires them to make through routing agreements and we submit that such requirement does not deprive either of its property without due process of law.

The question involved in this case is one of vast importance. Its determination will affect a large portion of intrastate traffic. And the determination of the principle involved will affect commerce throughout the United States. If the requirement made by the statutes of this state, that connecting carriers shall interchange local traffic and shall establish through routing as to such traffic, is held to deprive carriers of their property without due process of law, then it must necessarily follow that the power given to and exercised by the Interstate Commerce Commission under the Interstate Commerce Act to compel through routing is in violation of the Fourteenth Amendment to the constitution of the United States. And the same result will follow as to similar statutory regulation of railroads in nearly every state in the Union. In principle there is no difference between compulsory through routing over connecting lines between towns or cities and compulsory through routing to or between local shipping points in the same city or town. The use of one carrier's tracks or terminal

facilities by another is no different and is no greater in the one case than it is in the other, and a carrier is no more deprived of his property without due process of law in the one case than in the other. To hold the statute of Michigan unconstitutional is to strike a staggering blow at much of the progressive legislation, both state and federal, enacted in recent years. This very danger was foreseen and pointed out by Justice McKenna, who wrote the dissenting opinion concurred in by his associates, Justices Harlan and Moody, in the stock yards case, 212 U. S. 149, when he said:

> "It is contended that in some way (in what way is not pointed out) the state must exercise its right of eminent domain, and unless the right be exercised through an impartial tribunal there is not due process of law. It is also contended that there is an attempted transfer of terminals, and the duty of a local transfer company imposed on plaintiff in error, which in some way takes its property without due process of law. The question made then is of an inviolable right, impregnable in constitutional protection, against a legislative regulation such as in the case at bar, and to what contemplation does this bring us? If the right is impregnable in constitutional protection against regulation in the interest of intrastate commerce it is also impregnable in such constitutional protection against regulation in the interest of interstate commerce. Are we prepared to announce that conclusion? The consequences of it are certainly quite serious."

In conclusion, we desire to call the Court's attention to the well known rule laid down by the Supreme Court of the United States in Munn v. Ill., 94 U. S. 123, that "every statute is presumed to be constitutional, and ought not to be declared unconstitutional unless it is clearly so. If there is doubt, the expressed will of the legislature should be sustained."

GRANT FELLOWS,
Attorney General for Michigan,
Solicitor for Defendants.

GRAND TRUNK RAILWAY COMPANY *v.* MICHIGAN RAILROAD COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

No. 382. Argued October 23, 24, 1913.—Decided December 8, 1913.

A State is competent to create a commission and give it power of regulating railroads and investigating conditions upon which regulation may be directed; and the judiciary will only interfere with such a commission when it appears that it has clearly transcended its powers.

Courts are reluctant to interfere with the laws of a State or with the tribunals constituted to enforce them; doubts will not be resolved against the law.

It cannot as yet be asserted that Congress has, to the exclusion of the States, taken over the whole subject of carriers' terminals, switchings and sidings; and *quære* where the accommodation between intrastate and interstate commerce shall be made.

The fact that a movement of freight begins and ends within the limits of a city does not take from it its character of an actual transportation between two termini; and so *held* in regard to transportation between junction points in Detroit, Michigan.

While a city may be in some senses a terminal unit, the State Railroad Commission may regulate traffic between different points therein as transportation, and to do so does not amount to an appropriation of the terminals of one road for the use and benefit of other roads.

Transportation is the business of railroads and when, and to what extent, that business may be regulated so depends upon circumstances that

no inflexible rule can be laid down. *Wisconsin &c. R. R. Co.* v. *Jacobson*, 179 U. S. 287.

If the provisions for penalties in a statute creating a railroad commission and providing for the enforcement of the orders made by it are separable, as in this case, their constitutionality can be determined when their enforcement is attempted, and the operation of the whole act will not be suspended before that event. *Louis. & Nash. R. R. Co.* v. *Garrett*, *ante*, p. 298.

Railroad companies are incorporated for purposes of transportation; and the fact that a company was not specifically incorporated to carry on intra-city transportation cannot prevail against the power of the State to regulate it in regard to legitimate elements of transportation within the city.

An order of the Michigan Railroad Commission requiring certain railroads doing an interstate business to use their tracks within the city limits of Detroit for the interchange of intrastate traffic, sustained as being within the regulating power of the commission; and also *held* that such order was not unconstitutional as interfering with interstate commerce or as depriving the carriers of their property without due process of law.

198 Fed. Rep. 1009, affirmed.

THE facts, which involve the validity of an order of the Michigan Railroad Commission relative to intrastate transportation and switch connections in the city of Detroit, are stated in the opinion.

Mr. George W. Kretzinger, Jr., with whom *Mr. G. W. Kretzinger* and *Mr. Aldis B. Browne* were on the brief, for appellants.

Mr. Hal H. Smith, with whom *Mr. Grant Fellows*, Attorney General of the State of Michigan, was on the brief, for appellees.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Appeal from a decree of the District Court, three judges sitting, denying a motion of appellants for interlocutory

injunction against an order of the Michigan Railroad Commission and the denial of a motion of appellants for the continuance of a restraining order theretofore entered in the case.

The Commission was constituted by the Public Acts of the State and invested with quite full and detailed powers of regulation of the railroads of the State. Act No. 300 of the Public Acts of Michigan of 1909, as amended by Act No. 139, 1911.

Section 7 as originally enacted and as amended is alone specially relevant to the discussion and is inserted in the margin, subdivision (d) being the amendment.[1]

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[1] (55) SEC. 7. (a) All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: *Provided*, precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper.

(57) (c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks; *Provided*, such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise

After the amendment took effect, and on July 29, 1911, the Grand Trunk System, which is constituted of a number of railroad lines, published a tariff of charges, to be effective September 1, 1911, which, among other things, set forth the rates for the designated services within the corporate limits of the City of Detroit and as to team track services as follows:

"In case team track deliveries are required for the unloading of shipments received from other carriers, or when

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safe for transportation and properly loaded; *Provided further*, if the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised.

(57a) (d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: *Provided*, that when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination.

such team tracks are used for the loading of shipments for delivery to other carriers, three dollars per car in excess of the charge made for switching to or from industrial sidings will be assessed."

This tariff also provided a charge of $5.00 for switching to and from industrial sidings and a charge of $8.00 for team track delivery from junction points with other roads within the switching limits of Detroit.

A complaint was made by one John S. Haggerty to the Commission of this difference as discriminatory. Haggerty, it is said in one of the briefs, conducts a brick-making plant, having a siding on one of the railroads in Detroit, and to supply his trade ships carloads of freight over various railroad lines doing business in the city, among which are the lines of the Grand Trunk System.

An answer was filed to the complaint by the Grand Trunk Western Railway Company. After hearing, the Commission held that the difference in rates was discriminatory and the railway company was ordered to file a tariff removing the discrimination, that is, the discrimination between the charges for industrial switching and for switching between junction points and team tracks; and to publish and make effective "like charges for the movement of a carload shipment received from an industry within the City of Detroit, upon the said Grand Trunk Western Railway, consigned for delivery upon a team track or other siding of said road within the same city, and for a like shipment received by said Grand Trunk Western Railway from a connecting carrier at a junction point within the corporate limits of the city of Detroit, consigned to a team track or other siding upon said road within the same city."

Subsequently to the making of such order the Grand Trunk System published a new tariff to be effective March 16, 1912, naming a rate of $5.00 between industrial tracks and a like rate between junction points with con-

necting carriers, within the switching district of Detroit, and industrial tracks within the said limits; $8.00 between junction points with other railroad companies, within said limits, and team tracks within said limits; and $8.00 between team tracks on the railway's own lines. The tariff was duly filed with the Commission and with the Interstate Commerce Commission.

Haggerty filed a supplementary petition with the Commission complaining that the new rates were unreasonable and exorbitant, and, on March 15, 1912, the Commission ordered the postponement of the same until April 29 to give the Commission an opportunity for investigation into "the reasonableness of such proposed rate and the matter set forth in the complaint." Thereupon the Grand Trunk System issued a supplement to its tariff suspending the intrastate rates named in its tariff, and, on March 30, published a new tariff canceling all rates between industries having private sidings on the System and hold or team tracks on that System, and all rates between junction points with other carriers within the corporate limits of Detroit and the team tracks of the System. The effect of this tariff was to withdraw all intrastate and interstate switching movements, except as to the Detroit & Toledo Shore Line, with which the Grand Trunk was under contract for terminal switching.

On April 10 the Commission suspended this supplemental tariff in order to give it opportunity to investigate, and two days afterward the bill in this case was filed. On April 27 an amended bill was filed, and, on the same day, the Detroit, Grand Haven & Milwaukee Railway Company filed its bill.

We may observe that the order of the Commission of April 10 is the only one in controversy. The other orders of February 6 and March 15, 1912, were directed against the Grand Trunk Western Railway, and when it came to the knowledge of the Commission that

that road did not enter the city, the orders were canceled.

The bills prayed that the acts referred to and the order of the Commission be declared null and void as to complainants, that injunctions interlocutory and perpetual be granted restraining appellees from executing the order, and from taking any steps or proceedings to enforce any of the penalties or remedies of the statute.

Answers were filed to the bills, and supporting and attacking affidavits. The District Court upon hearing denied an injunction and vacated the restraining order, but suspended the formal entry of its orders. Subsequently the cases were consolidated for the purposes of an appeal, and an appeal allowed. The bond was fixed at $100,000 and the restraining orders continued in force pending the appeal.

The two suits may be treated as one, the material points being identical, except as to the territory through which the roads run and the diversity of citizenship which exists only in the first suit filed. The foundation of both suits is the same, that the order of the Commission and the acts of the State under which it was made, in so far as the order and the acts require of complainants or their property any of the services above set forth or so threatened to be required, constitute the taking of their property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States; and is also a violation of the commerce clause of that instrument. The specification under the latter is "that Congress has taken over the whole subject matter of terminals, team tracks, switching tracks, sidings, etc., of carriers engaged in interstate commerce, and has enacted that such carriers shall not be required to give the use of such terminal facilities to other carriers engaged in like business."

It is further objected against said order that the com-

panies were not incorporated for the purpose of local or intrastate switching or drayage business, but for the purpose of interstate and intrastate commerce; and, further, the penalties prescribed by the acts under which the Commission purported to have acted are so drastic that a resort to court to test the validity thereof is at the risk of imprisonment in the jails of the various counties where the lines of the companies run, and, therefore, the companies are denied the equal protection of the laws and their property is taken without due process of law.

The question in the case is whether, under the statutes of the State of Michigan, appellants can be compelled to use the tracks it owns and operates in the city of Detroit for the interchange of intrastate traffic; or, stating the question more specifically, whether the companies shall receive cars from another carrier at a junction point or physical connection with such carrier within the corporate limits of Detroit for transportation to the team tracks of the companies; and whether the companies shall allow the use of their team tracks for cars to be hauled from their team tracks to a junction point or physical connection with another carrier within such limits and be required to haul such cars in either of the above-named movements or between industrial sidings.

It is contended that the order is an interference with interstate commerce. The contention is premature, if not without foundation. Section 7, before its amendment, required all railroads subject to it to establish switching connections between one another and to establish depots, and otherwise, for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of property and passengers to and from their several lines and those connecting therewith, and also for the transfer and delivery of cars without unreasonable delay or discrimination to any point on their own lines or on any connecting line, and forbidding discrimina-

tion in rates and charges. And the respective companies were required to draw over their roads the merchandise and cars of any other corporation or individual having connecting tracks when the cars are of proper gauge, equipment, and properly loaded. Power was given to the Commission, if the compensation could not be agreed on by the roads, to fix such compensation. In other words, the duty of investigation was imposed on the Commission and the duty to render such judgment as was suitable to the situation and to award compensation to the carriers for any service required of them.

We have seen from the statement of facts that the first concern of the Grand Trunk was the right to charge what it pleased or discriminate between the services. Inconvenience to its interstate business seems to be an after thought. Besides, the fact of inconvenience is disputed. It is charged, it is true, in an affidavit filed by appellants; but there was a counter affidavit, and it was averred that the interchange of traffic required by the legislature of the State did not impede interstate business, but on the contrary facilitated it and intrastate commerce and relieved, not caused, congestion on the tracks of the various railroads in the city. And, as we have seen, the order of the Commission was suspensory only of the tariff of the appellants, not a final determination against it or of the conditions which might or might not justify it. It is too late in the day to question the competency of a State to create a commission and to give it the power of regulating railroads and necessarily of investigating the conditions upon which regulation may be directed. If a judicial interference is sought with the exercise of such power it must be clearly shown to have been transcended, not left as a conclusion from the balancing of conflicting affidavits, or even, it may be, as held by the District Court, on *ex parte* affidavits. Courts are reluctant to interfere with the laws of a State or with the tribunals constituted

to enforce them. Doubts will not be resolved against the law, nor the decision of its tribunals prevented or anticipated unless the necessity for either be demonstrated. Upon these principles the District Court acted, and rightly acted.

We will not dwell on the contention of appellants that Congress has taken over the whole subject of terminals, team tracks, switching tracks, sidings, etc. We need make no other comment than that it cannot be asserted as a matter of law that Congress has done so; and where the accommodation between intrastate and interstate commerce shall be made we are not called upon to say on this record.

Before proceeding to the more important contention of appellants, that is, movement between junction points and other points, it is well to observe that a distinction is alleged to exist between team tracks and industrial sidings or tracks. The allegation (which is neither admitted nor denied in the answer) is that the lands upon which the latter are located are held, owned, or were acquired for the purpose of accommodating the tracks without expense to appellants, either in the acquisition or maintenance of the lands or tracks. Appellants, it is urged further, are not responsible for cars placed on such tracks nor are appellants required to police them. Team tracks are laid upon the ground acquired by appellants and were constructed and are maintained by them. The latter, therefore, are distinctly accessories or facilities in the receipt and delivery of freight in transportation, both within and to and from points outside of the city. The industrial sidings have, it may be said, more special character. But upon this distinction no point is made in the argument and the District Court left it untouched in its decision, no doubt because in that court, as here, no emphasis was put upon the distinction. In other words, because it was considered that it falls under the prin-

ciples which related to the team tracks; and we may so regard it.

The proposition of appellants is, as said by the District Court, that such service and team track service "are not in a proper sense transportation, but are essentially distinguishable therefrom"; or, to put it another way—and one which expresses more specially the contention of appellants—they are mere conveniences at the destination or initial point of the transportation and hence are terminal facilities merely and their use is not required to be given to other railroads. The District Court did not regard them in the latter character. After stating the conditions which exist in Detroit and its extent, the court said of them: "Such tracks are necessary to prevent the congestion which would result from requiring all carload freight, both in and out, to be delivered at the freight depots of the respective roads, and in a very proper sense are shipping stations." The court concluded that the services were transportation and that the statute of the State validly empowered the Commission "to require local transportation by a railroad between its own shipping stations within a city, whether such plurality of shipping stations has been voluntarily established by the railroad, as here, or has been required by the Commission under its lawful powers, and provided such transportation is for such substantial distance and of such a character as reasonably to require a railroad haul, as distinguished from other means of carriage." The court further said: "It is clear that a statute validly may, and the statutes we are considering do, authorize the employment of such depots, side-tracks, and team tracks of a railroad for transporting carload freight to and from the junction of such road with another road as a substantial part of a continuous transportation routing, where such junction is outside the city limits." And it was remarked that the fact that the freight movement begins and ends within

the limits of a city does not take from it its character "of an actual transportation between two termini," the other conditions obtaining. We concur in the conclusion of the court.

The extent of Detroit is about 22 miles, and its population about 500,000. The effect of the order is simply that the companies shall accept freight at the designated points for shipment to the other designated points. This, except in an extreme sense, is not a use of the tracks and terminals; or, rather, it is only a proper use—the use for which the roads were constituted to afford. An area of 22 miles is attempted by appellants to be localized and made a destination point. A city may, in a sense, be such a terminal unit, but considering the extent of Detroit, it is competent, we think, for the State under the conditions which this record presents to consider points within it the beginning and destination of traffic. And to call the service necessary to such intrastate movement of freight a taking of terminals is misleading and puts out of view the full signification of the question which the record presents, which is, Is there a distinct and sufficient movement between places which the companies can be required to perform, or which, to put it another way, constitutes transportation and therefore such as the companies were created to perform? That cars may be delivered or received is but an incident. The statute therefore is a regulation of the business of appellants, not an appropriation of their terminal facilities for the use and benefit of other roads. It is therefore justified by the doctrine of *Wisconsin &c. Rd. Co.* v. *Jacobson*, 179 U. S. 287. See also *Minneapolis & St. Louis R. R. Co.* v. *Minnesota*, 186 U. S. 257. In the *Jacobson Case* an order of the Railroad Commission of the State of Minnesota was considered which required two railroads of the State to make track connections. The statute of the State provided that all common carriers subject to its provisions

should provide at all points of connection, crossing, or intersection at grade, where it was necessary for interstate commerce, ample facilities for transferring cars used in the regular business of their respective lines of road from other lines or tracks to those of any other carrier whose lines or tracks might connect with, cross or intersect their own, and should provide facilities for the interchange of cars, and for the receiving, forwarding and delivering of passengers, property and cars to and from their several lines and those of other carriers connecting therewith, without discrimination in rates and charges. And it was provided that one carrier should not be required to furnish its tracks, equipment or terminal facilities to another without reasonable compensation, the cost of connections to be proportionately divided between the carriers; and in case of disagreement, it was to be settled by the Commission. The roads were required to establish reasonable joint through rates at the demand of any person or of the Commission. And it was provided that carload lots should be transferred without unloading the cars unless it be done without cost to the shipper or receiver and without unreasonable delay.

Under this statute track connections were required to be made by the Wisconsin &c. R. R. Co., with an intersecting road. In its answer before the State Railroad Commission it alleged that to construct a connecting track would require it to go outside of its right of way and to condemn land for that purpose. In addition it urged that to compel such connection would violate the commerce clause of the Constitution and the Fourteenth Amendment. The Commission directed the connection to be made and its order was affirmed by the local state court to which an appeal was taken, as provided by the statute. This court affirmed the order, deciding that it was a proper exercise of the power of regulation of the business of the companies. The reasoning to sustain this

conclusion need not be reproduced. It rested upon the ultimate proposition that railroad companies "are organized for the public interests and to subserve primarily the public good and convenience." And deciding this to be the purpose of the creation of the roads and that government had power to secure it, it was held that where a provision for regulation is reasonable and appropriate, when considered with regard to the interests both of the company and of the public, the legislation is valid and will furnish ample authority for the courts to enforce it, even though eminent domain must be exercised or cost incurred. This principle, illustrated by the facts of the case, is apposite to the regulation under review. If the establishment of track connections by intersecting roads with its necessary accessories of sidings and switches be required and acceptance and delivery of loaded cars as a convenience of transportation, surely team tracks and sidings in Detroit and the delivery and acceptance of loaded cars are as much so.

This view is not opposed by *Louisville &c. R. R. Co.* v. *Stock Yards Co.*, 212 U. S. 132. There a provision of the constitution of the State of Kentucky which required a carrier to deliver its cars to a connecting carrier was held invalid because it did not provide adequate protection for their return or compensation for their use. It was hence held that it amounted to a taking of property without due process of law. But the court was careful to say that "in view of the well-known and necessary practice of connecting roads we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transshipment or breaking bulk, in case of an unreasonable refusal by a carrier to interchange cars with another for through traffic." The point of the decision was that compensation should be provided, and by the law. As it is expressed in the opinion, "The law itself must save the parties' rights, and not leave them

to the discretion of the courts." This as a condition was explained, for it was said: "We do not mean, however, that the silence of the [State] constitution might not be remedied by an act of the legislature or a regulation by a duly authorized subordinate body if such legislation should be held consistent with the State constitution by the State court." These conditions exist in the case at bar.

There is another part of the *Louisville &c. R. R.* v. *Stock Yards Case* which is more applicable to the contentions of the parties hereto and determine, it is urged, against the statute under consideration and the order of the Commission. The judgment reviewed required the railroad company to receive at its connection with the Southern Railway Company and to switch, transport and deliver all live stock consigned from the Central Stock Yards (the stock depot of the Southern Railway) to any one at the Bourbon Stock Yards (the stock depot of the Louisville & Nashville Railroad). This part of the judgment was based also upon the constitution of the State. We said: "If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone."

It will be observed that the beginning of traffic was at the Central Stock Yards, the stock yards of the Southern, and was to be hauled by that road to its connection with the Louisville & Nashville, and by the latter from that

point to the Bourbon Stock Yards, the stock depot of the latter railroad. The yards were the terminals of the respective roads for live stock delivery, and the case turned upon the point that the roads were competitive, and that the point of delivery was an arbitrary one, and that thereby the terminal station of one company was required to be shared with the other company.

In the case at bar a shipper is contesting for the right, as a part of transportation. The order of the Commission was a recognition of the right and legally so. Considering the theater of the movements, the facilities for them are no more terminal or switching facilities than the depots, side tracks and main lines are terminal facilities in a less densely populated district. A precise distinction between facilities can neither be expressed nor enforced. Transportation is the business of railroads, and when that business may be regulated and to what extent regulated may depend upon circumstances. No inflexible principle of decision can be laid down. This was recognized in *Wisconsin &c. R. R. Co.* v. *Jacobson, supra.* There the court was careful not to say that under no circumstances could an order requiring track connections between intersecting roads be a violation of constitutional rights. "It would depend," it was said, "upon the facts surrounding the cases in regard to which judgment was given. . . . And in many cases questions of degree are the controlling ones by which to determine the validity, or the reverse, of legislative action." Indeed, no case could better illustrate the value of the principle than does this case, where the exceptional situation of Detroit as shown by the record, the relation of the tracks in controversy to that situation, their length and their functions, as respects the commerce of Detroit which in the nature of things they perform, not merely as instruments of terminal service and delivery, but of railway transportation in the completest sense, are essential and controlling factors in the determination of

the question presented. To which controlling conditions there must of course be added the fact that the railroad itself for a long period of time had recognized the situation and had applied the tracks to uses of transportation in the proper sense as distinguished from mere terminal service, a use which was only abandoned or sought to be abandoned when authority was exerted to prevent unreasonable and to secure reasonable charges for the services.

It is contended by appellants that the statute is void upon its face because the severity of the penalties preclude an appeal to the courts against its provisions except at such risks and costs that they should not be compelled to incur, and *Ex parte Young*, 209 U. S. 123, is adduced. But the provision for penalties is in a section by itself and when their enforcement is attempted their constitutionality can then be determined. *Minnesota Rate Cases*, 230 U. S. 352; *Louis. & Nash. R. R. Co.* v. *Garrett*, *ante*, page 298.

As we have determined that the tracks or terminal facilities of appellants are not taken by the order of the Commission, we need not consider a subdivision of § 7 which provides that nothing in the act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business.

The contention of appellants that they were not incorporated for the purpose of intra-city transportation is untenable. They were incorporated for the purpose of transportation, and geographical limitations under the circumstances which this record exhibits cannot prevail against the power of the State to regulate.

Decree affirmed.